

**WESTCHESTER COUNTY
HUMAN RIGHTS COMMISSION
RULES AND REGULATIONS**

(JULY 2010)

**WESTCHESTER COUNTY HUMAN RIGHTS
COMMISSION
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TABLE OF CONTENTS

CHAPTER 1

Subchapter A: *Scope of Rules and Definitions*

§ 1-01 Scope of Rules

§ 1-02 Definitions and Construction

Subchapter B: *Statute of Limitations*

§ 1-03 Statute of Limitations

Subchapter C: *Claims, Complaints, and Answers*

§ 1-04 Claims

§ 1-05 Complaints

§ 1-06 Answer

§ 1-07 Notice of Intent to Answer

Subchapter D: *Withdrawals and Dismissals*

§ 1-08 Withdrawals

§ 1-09 Administrative Dismissals

Subchapter E: *Agreements*

§ 1-10 Mediation and Conciliation

§ 1-11 Severance of Parties by Settlement

Subchapter F: *Representation, Address, and Signature*

§ 1-12 Representation

§ 1-13 Change of Address

§ 1-14 Signature

CHAPTER 2

Subchapter A: *Investigation*

§ 2-01 Policy

§ 2-02 Subpoenas

§ 2-03 Preservation and Production of Records

Subchapter B: *Determination and Order*

§ 2-04 Basis of Determination

§ 2-05 Review of Determination

CHAPTER 3

Subchapter A: *Pre-Hearing Procedure*

§ 3-01 Notice of Referral

§ 3-02 Notice of Hearing

§ 3-03 *Ex Parte* Communications

§ 3-04 Temporary Injunctions

Subchapter B: *Discovery*

§ 3-05 Discovery

§ 3-06 Order of Compliance

Subchapter C: *Hearings*

§ 3-07 Powers of the Administrative Law Judge, generally.

§ 3-08 Record

§ 3-09 Making of Record

§ 3-10 Burden of Proof

§ 3-11 Hearings

§ 3-12 Evidence

Subchapter D: *Decisions and Orders*

§ 3-13 Orders

§ 3-14 Commission review of Administrative Law Judge's recommendation and issuance of order

CHAPTER 1

Subchapter A: *Scope of Rules and Definitions*

§ 1-01. Scope of Rules. These rules are intended to carry out the provisions of the Westchester County Human Rights Law, Article I of Chapter 700 of the Laws of Westchester County, Westchester County Local Law No. 17-1999, as amended, and the policies and procedures of the Human Rights Commission in connection therewith, as authorized by sections 700.09(m) and 700.11(j) of the Laws of Westchester County.

§ 1-02. Definitions and Construction. For purposes of this chapter,

Application of Local Law. These rules shall apply to all discriminatory practices as defined in Westchester County Local Law No.17-1999, as amended, except that no complaint shall be filed with respect to an unlawful discriminatory practice unless such practice occurred on or after March 14, 2000. These rules shall not modify or abridge any provisions of the Westchester County Human Rights Law.

Calculation of dates. A number of days specified in these rules means calendar days exclusive of the calendar day from which the calculation is made. All other rules of construction shall be governed by New York law.

Commission. Commission shall mean the Westchester County Human Rights Commission.

Office of the Commission. Office of the Human Rights Commission shall mean the administrative office of the Westchester County Human Rights Commission including the Executive Director, Deputy Director, Investigators, and any staff, paid or volunteer, working in that physical office or in an official capacity outside the physical office. .

Claim. Claim shall mean an allegation submitted to the Office of the Commission prior to the filing of a formal verified complaint.

Claimant. Claimant shall mean a person who has brought a claim alleging that they have been aggrieved by an unlawful discriminatory practice.

Complainant. Complainant shall mean a claimant who has filed a formal and verified written complaint with the Westchester County Human Rights Commission alleging that they have been aggrieved by an unlawful discriminatory practice, as defined by the Westchester County Human Rights Law.

Respondent. Respondent shall mean a person who has been charged in a complaint filed pursuant to these rules with having committed an unlawful discriminatory practice pursuant to Westchester County Human Rights Law.

Necessary Parties. Necessary parties shall mean any persons who have such an interest in the subject matter of a proceeding under the Westchester County Human Rights Law, or whose rights are so involved, that no complete and effective disposition can be made without their participation in the proceeding, including all complainants and all respondents.

Probable Cause. Probable cause shall mean cause which would enable a reasonable person, looking at the evidence as a whole, to reach the conclusion that it is more likely than not that an unlawful discriminatory practice has been committed.

Subchapter B: *Statute of Limitations*

§ 1-03. Statute of Limitations. Except as otherwise provided in sections 700.11 and 700.14 of the Westchester County Human Rights Law, any complaint filed with the Commission pursuant to section 700.12 of this chapter must be filed within one year after the occurrence of the alleged unlawful discriminatory practice.

Subchapter C: *Claims, Complaints, and Answers*

§ 1-04. Claims.

(1) *Who may submit a Claim?*

- a. *Generally.* Any person, as defined in § 700.02(15) of the Westchester County Human Rights Law, claiming to be aggrieved by an unlawful discriminatory practice may, personally, by legal guardian, or by authorized representative or attorney-at-law, submit a claim with the Office of the Commission.
- b. *Executive Director.* The Executive Director of the Commission may initiate a complaint alleging that a respondent has engaged in a pattern or series of unlawful discriminatory practices affecting more than one person.

(2) *Determination of Jurisdiction.* The Commission shall determine whether or not it has jurisdiction.

§ 1-05. Complaints.

(1) *Type of Complaint.*

- a. *Complaints filed by complainants.* Any person, as defined in § 700.02(15) of the Westchester County Human Rights Law, claiming to be aggrieved by an unlawful discriminatory practice may, personally, by legal guardian, or by authorized representative or attorney-at-law, make, sign and file with the Commission a formal verified complaint in writing.

- b. *Complaints initiated by the Executive Director.* The Executive Director of the Commission may initiate a complaint alleging that a respondent has engaged in a pattern or series of unlawful discriminatory practices affecting more than one person.

(2) *Format of complaint.*

a. *General.*

- i. All complaints shall be in writing and shall set forth the name and address of the person and/or entity alleged to have committed the unlawful discriminatory practice complained of, including the facts and circumstances thereof, and any other information as may be required by the Commission.
- ii. The complainant's signature must be sworn to on any documents required in connection with the filing of a complaint for the purpose of this section.

- b. *Executive Director initiated complaints.* A complaint initiated by the Executive Director shall be signed and verified by the Executive Director and shall set forth the name and address of the person and/or entity alleged to have committed the unlawful discriminatory practices complained of including the facts and circumstances thereof, together with such other information as may be required by the Commission.

(3) *Filing of Complaint.* A complaint is deemed filed when all required documentation, waivers and relinquishments, and signatures, as provided for in the Westchester County Human Rights Law, have been accepted by the Office of the Human Rights Commission.

(4) *Service of the Complaint.* Within thirty (30) days after the filing of any complaint, the Commission shall serve a copy of the Complaint and a copy of the Human Rights Commission Rules and Regulations upon the respondent and all persons it deems to be necessary parties.

(5) *Jurisdiction.*

- a. *General.* Within sixty (60) days after the filing of the formal verified complaint, the Commission shall determine whether it has jurisdiction.
- b. *Jurisdiction exists.* If the Commission determines that it has jurisdiction, it shall also determine, within one hundred and eighty (180) days of the filing of the complaint, whether there is probable cause to believe that the respondent has engaged or is engaging in an unlawful discriminatory practice.

- c. *Jurisdiction does not exist.* If the Commission determines that it lacks jurisdiction or that probable cause does not exist, the Commission shall issue an order dismissing the complaint as to such respondent, which order shall be served by mail upon all necessary parties to the proceeding.

(6) *Amendment to Complaint.*

- a. *Before referral for a hearing.* A complaint may be amended only once as a matter of right at any time before it is referred to an Administrative Law Judge or the Commission for a hearing. Any amendment to the complaint, made prior to the filing of a Determination and Order finding probable cause, shall extend the one hundred and eighty (180) day statutory time frame for an additional sixty (60) days.
- b. *Second and subsequent amendments before referral for a hearing.* Any additional amendments to the complaint will be at the discretion of the Executive Director. Leave to amend shall not be unreasonably withheld.
- c. *After referral for a hearing.* The complaint may be amended only upon application to, and permission of, the presiding Administrative Law Judge or as otherwise provided by law.

§ 1-06. Answer.

- (1) *Requirements.* The respondent shall file a verified answer with the Commission.
- (2) *Time of Filing.* At least two business days prior to the hearing the respondent shall, and any necessary party may, file a written answer to the complaint with the Commission and serve a copy upon all other parties to the proceeding. If the respondent fails to answer the complaint, the Commission may enter the default and the hearing shall proceed on the evidence in support of the complaint. Such default may be set aside for good cause shown upon such terms and conditions as may be just.
- (3) *Form and content of answer.* Where a respondent files an answer, any allegation of the complaint that is not answered shall be deemed admitted, any allegation upon which the respondent alleges insufficient information shall be deemed denied.
- (4) *Counterclaims and cross-claims.* The respondent shall not be permitted to interpose either a counterclaim or a cross-claim in the answer.

(5) *Additional time to answer. Application for additional time.* The respondent may apply, in writing, to the Commission for additional time to file an answer. Such request shall be granted only upon good cause shown, within the discretion of the Commission.

(6) *Amendment of Answer.*

- a. *Before referral for a hearing.* Before a case has been referred to a hearing the answer may be amended once, as a matter of right.
- b. *Second and subsequent amendments before referral for a hearing.* Any additional amendments to the answer will be at the discretion of the Executive Director. Leave to amend shall not be unreasonably withheld.
- c. *After referral for a hearing.* After a case has been referred for a hearing, the answer may be amended only upon application to, and permission of, the presiding Administrative Law Judge or as otherwise provided by law.
- d. *Extensions pursuant to amendments.* Any amendment of the answer, or extension of time to answer made prior to a filing of a Determination and Order finding probable cause, shall extend the one hundred and eighty (180) day statutory time period for the filing of said order by an additional sixty (60) days.

§ 1-07. Notice of Intent to Answer. The respondent may file a Notice of Intent to Answer with the Commission within thirty (30) days of receiving the complaint.

Subchapter D: *Withdrawals and Dismissals*

§ 1-08. Withdrawals.

(1) *General.*

- a. When a complainant requests withdrawal of his or her complaint, the Commission may dismiss the complaint.
- b. Subsequent to the service of an answer by the respondent, the complainant may withdraw a complaint, provided, however, that, upon application by the respondent, the Commission may preclude the complainant from subsequently filing any complaint with the Commission based upon the same transactions or occurrences or series of transactions or occurrences as the complaint which was withdrawn.
- c. The Commission may deny the filing of subsequent complaints based upon the same transactions or occurrences or series of transactions or occurrences as the complaint which was withdrawn, even absent

application by the respondent for such preclusion, where the subsequent complaint would constitute an abuse of process.

(2) *Complaints initiated by Executive Director.* Nothing in this section shall diminish the Commission's authority to bring or continue a complaint initiated by the Executive Director of the Westchester County Human Rights Commission.

§ 1-09. Administrative Dismissals.

(1) *General.* The Executive Director may dismiss a complaint for administrative purposes at any time prior to the taking of testimony at a hearing. Administrative purposes shall include, but not be limited to, the following conditions:

a. Commission personnel have been unable to locate the complainant after reasonable efforts to do so;

b. The complainant has failed to:

i. Appear at mutually agreed-upon appointments with the Commission;

ii. Appear at an assigned mediation or conflict resolution conference;

iii. Provide the requested documentation; or

iv. Attend a scheduled hearing.

c. The complainant has repeatedly engaged in conduct that is disruptive to the orderly functioning of the Commission;

d. Pursuance of the complaint will not serve the public interest. Without limitation, this shall include those circumstances where it is not likely that further investigation will result in a finding of probable cause or where the passage of time or other factors have materially impaired the ability of a respondent to defend against the allegations of the complaint.

(2) *Dismissal based on jurisdiction.* The Commission shall dismiss a complaint in whole or in part where it concludes that the complaint or a portion thereof is not within its jurisdiction. Should the Commission dismiss a case in part, it shall retain jurisdiction over the remaining portion within its jurisdiction.

(3) *Dismissal for lack of probable cause.* If, after investigation, the Commission determines that probable cause does not exist to support the claim that a respondent has engaged or is engaging in an unlawful discriminatory practice, the Commission shall dismiss the claim or complaint in whole or in part as to such respondent by way of a Determination and Order.

(4) *Notification of dismissal.*

- a. When the Commission makes a determination to dismiss a claim, the Commission shall notify all necessary parties in writing of the dismissal by a Determination and Order.
- b. After a formal verified complaint has been filed, and the Office of the Commission has made a determination to dismiss the complaint, the Commission shall serve an Order of Dismissal upon all necessary parties.

(5) *Review of Determination and Order.* A complainant aggrieved by a Determination and Order made pursuant to this section may apply to the Commission for review of such order within thirty (30) days of the service of such order by filing such application with the Office of the Commission. The Commission shall thereafter make a determination regarding the application within twenty (20) days.

Subchapter E: *Agreements*

§ 1-10. Alternative Dispute Resolution - Settlement, Mediation, and Conciliation.

(1) *Types of Agreements.*

- a. *Settlement Agreement.* The Commission, complainant, and respondent may at any time after the filing of a complaint enter into a settlement agreement of a complaint.
- b. *Mediation Agreement.* The complainant and the respondent may enter into a mediation agreement, subject to the approval of the Commission, pursuant to § 1-104(e) of this Subchapter.
- c. *Conciliation Agreement.* The Commission may enter into an agreement with any respondent resolving the complaint by agreement in accordance with Section 700.11(e) of the Laws of Westchester County. Such conciliation agreement may 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 Commission and the respondent, including a provision for the entry of an order in the New York State Supreme Court, County of Westchester, or in such other county where the respondent resides or maintains an office for the transaction of business, containing the terms of the conciliation agreement.

(2) *Confidentiality; Failure to Participate*

- i. *Confidentiality.* Any statement made by any complainant or by any respondent during the settlement or mediation process conducted by, or on behalf of, the Commission shall not be admitted into evidence during any hearing or proceeding before the Commission and shall not be utilized in any fashion in any proceeding to either enforce or review any determination of the Commission, unless the party making the statement affirmatively authorizes, in writing, the admission of the statement.
- ii. *Failure to participate.* The failure or refusal of any party to participate in the settlement or mediation process, or the failure of any party to accept a recommendation by any mediator as to the resolution of the matter, shall not be admissible in any hearing or proceeding before the Commission.

(3) *Form and Content of Agreements.*

- a. *General.* Agreements shall be executed by all necessary parties or as provided by law. The provisions of an agreement may be such as are agreed to by the Commission and all necessary parties.
- b. *Role of the Commission.* All agreements shall be conducted under the auspices of the Commission.
- c. *Acknowledgement and approval of the Commission.* Agreements shall be deemed fully executed only upon the approval of the Commission.
- d. *Effective date.* Agreements shall be deemed binding at the time such agreement is fully executed by the Commission and all necessary parties.

(4) *Mediation - Procedures.*

- a. *Agreement to Mediate.* The Commission, complainant, and respondent may at any time enter into an agreement to mediate a complaint by filing a Consent to Mediation Form with the Commission.
- b. *Selection of the Mediator.* The Executive Director of the Commission or designee shall assign an independent third party mediator from the Commission's Roster of Mediators.
- c. *Notice of Mediation.* Thirty (30) days prior to the date of the mediation, the Commission shall provide all necessary parties to the mediation or their attorneys a Notice of Mediation which shall include the case number, name and address of necessary parties, the date, time and location of the mediation and the name of the mediator.

- d. *Consent to Mediation.* Mediation is a voluntary process. All necessary parties are required to complete and sign a Consent to Mediation form prior to the opening of the mediation.
- e. *Mediation Agreement.* If the dispute is resolved via the mediation process, a Mediation Agreement shall be drafted and forwarded to all parties within 30 days of the mediation.
- f. *Execution.* The mediation agreement shall be executed by the complainant(s) and respondent(s) and shall be subject to the approval of the Commission.

(5) *Conciliation - Procedures.*

- a. *Agreement of Terms.* If the complainant agrees to the terms of the agreement or fails to object to such terms within fifteen (15) days after it was mailed to the complainant, the Commission may proceed to enter into the agreement pursuant to § 700.11(e).
- b. *Objection to Agreement.* If the complainant desires to object to the agreement he or she shall specify such objections in writing within fifteen (15) days after the proposed agreement was mailed to the complainant.
- c. *Review of Objections to Agreement.* Upon review of such objections, the Commission may make such order as it, in its sole discretion, finds to be just and proper, including (a) an order approving the agreement; (b) an order dismissing the complaint; or (c) an order scheduling a hearing on the complaint.

§ 1-11. Severance of Parties by Settlement. At its sole discretion and upon proper application, the Commission may permit respondent(s) and/or complainant(s) in a multi-party matter to settle independent of the other respondents or complainants. Said severance settlement shall result in said respondent or complainant being withdrawn from the proceeding and removed as a party in future matters involving the same actions under appropriate circumstances.

Subchapter F: *Representation, Address, and Signature*

§ 1-12. Representation. Complainants and respondents may be represented by counsel. Counsel and non-represented parties shall file with the Commission a Notice of Appearance which shall contain the individual party's name or the person or persons for whom the attorney appears and the attorney's name, address, and telephone number.

§ 1-13. Change of Address. Complainants, respondents, and their legal representatives are under a continuing obligation to notify the Commission of any change in their address and/or primary contact information within ten (10) days of any such change.

§ 1-14. Signature. Every pleading, written motion, or other paper that is served on another party, filed, or submitted to the Commission shall be signed by an attorney. If the party is not represented by an attorney, then it shall be signed by that party. The name of the attorney or party must be clearly printed or typed directly below the signature.

CHAPTER 2

Subchapter A: *Investigation*

§ 2-01. Policy. The procedures to be followed during the investigative process shall be those within the sole discretion of the Commission that will best facilitate accurate, orderly, and thorough fact-finding.

§ 2-02. Subpoenas.

(1) *Types of Subpoenas.*

- a. *Subpoena ad testificandum.* The Commission may, with or without application of a party, serve or issue a *subpoena ad testificandum* to compel the attendance of any person as a witness.
- b. *Subpoena duces tecum.* The Commission may, with or without application of a party, serve or issue a *subpoena duces tecum* to require production of any evidence material and relevant to any matter within the jurisdiction of the Commission. The Commission may also serve or issue a *subpoena duces tecum* on any party or person to produce and permit a party seeking discovery, or someone acting on his or her behalf, to inspect, copy, test, and/or photograph any designated documents or any things which are in the possession, custody or control of the party or person served.

(2) *Applications for subpoenas.*

- a. *Applications requesting subpoenas.* A party may submit an application requesting the issuance of a subpoena that will require the attendance of a person to give testimony at a hearing or the production of books, papers, records, and other items at a hearing may be made by a party.
- b. *Requirements.* The application for a subpoena shall specify why the testimony or record(s) are material and relevant. The application shall be made to the Office of the Commission within a reasonable and timely manner. .

(3) *Withdrawal or Modification of Subpoenas.*

- a. *Prior to the Notice of Hearing.* Prior to the service of the Notice of Hearing, any request to withdraw or modify a subpoena issued by the Commission shall be made in writing to the Commission.

- b. *After the Notice of Hearing.* After the service of the Notice of Hearing, any request to withdraw or modify a subpoena issued by the Commission shall be made to the presiding Administrative Law Judge on behalf of the Commission.

§ 2-03. Preservation and Production of Records.

- (1) *General.* The Commission shall have the authority to make demands for the preservation and production of any and all documents and records, including but not limited to, electronically stored information. The demand shall require that such records be made available for inspection by the Commission and/or be filed with the Commission.
- (2) *Objection to demand for the production of records.* Any person upon whom a demand has been made may assert a written objection to the demand within ten (10) days after service of the demand by serving such objection upon the Commission. The written objection shall state, with reasonable particularity, the reasons for each objection. The Commission shall have ten (10) days from service of the objection to respond.

Subchapter B: Determination and Order

§ 2-04. Basis of Determination and Order.

- (1) *General.* Within one hundred and eighty (180) days of the filing of the complaint, the Commission shall determine whether or not probable cause exists. In either instance, within such time frame, a Determination and Order shall be served by mail upon all necessary parties to the proceeding.
- (2) *Extensions.*
 - a. An extension of time to file an answer prior to the filing of a Determination and Order, shall extend the one hundred and eighty (180) day statutory time period for the filing of the Determination and Order by an additional sixty (60) days.
 - b. The filing of an amended complaint, or an amended answer prior to the service of a Determination and Order, shall extend the one hundred and eighty (180) day statutory time period for the filing of the Determination and Order by an additional sixty (60) days.

§ 2-05. Review of Determination and Order.

- (1) A complainant aggrieved by a Determination and Order made pursuant to this section may apply to the Commission for review of such order within thirty

(30) days of the service of such order by filing such application with the Office of the Commission. The Commission shall thereafter make a determination regarding the application.

- a. The application for review of the Determination and Order may be referred to an Appeals committee comprised of three members of the Commission for a report and recommendation on the application.

(2) A probable cause finding is not reviewable.

CHAPTER 3

Subchapter A. *Pre-Hearing Procedure*

§ 3-01. Notice of Referral.

- (1) *General.* The Notice of Referral shall assign an Administrative Law Judge to a case. Whenever reference is made in this chapter to the authority of an Administrative Law Judge in connection with proceedings, such authority shall apply to the Commission, if the hearing will be conducted directly before the Commission.
- (2) *Service.* The Notice of Referral shall be served upon the complainant, respondent, and all necessary parties at their last known address.
- (3) *Requirements.* The Notice of Referral shall also state whether the respondent has filed a verified answer with the Commission.

§ 3-02. Notice of Hearing. The Commission shall, at least thirty (30) days prior to the scheduled hearing date, serve the Notice of Hearing upon the complainant, the respondent, and all necessary parties.

§ 3-03. *Ex parte* Communications. Except for ministerial matters, and except on consent or during settlement conferences, communications with an Administrative Law Judge or Commission members concerning a case, other than a status inquiry, shall occur only with all necessary parties present, 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. In carrying out the duties of the Office of the Commission, the Executive Director and staff members may engage in *ex parte* communications.

§ 3-04. Temporary Injunctions. At any time after the filing of a complaint with the Commission alleging an unlawful discriminatory practice under this chapter, if the Commission determines that the respondent is doing or procuring to be done any act tending to render ineffectual any order, the Commission may, by the County Attorney, apply to the New York State Supreme Court, in Westchester County, or in such other

county where the respondent resides or maintains an office for the transaction of business, for a temporary injunction and for a temporary restraining order.

Subchapter B. *Discovery*

§ 3-05. *Discovery.*

Availability. The availability of Commission files shall be subject to the applicable privacy and confidentiality provisions of the New York State Public Officers Law and other applicable laws. The extent and methods of discovery shall be in the discretion of the Administrative Law Judge.

§ 3-06. *Order of Compliance.*

- (1) *Filing.* Whenever a party fails to comply with a discovery request, any other party may make a written application to the Administrative Law Judge for an Order of Compliance. Such application must be made by filing the Order of Compliance with the Commission.
- (2) *Generally.* The Administrative Law Judge may order compliance with the discovery request or may order such other relief as may be deemed just and proper.
- (3) *Objection to the Order of Compliance.* Any party upon whom such a demand is made shall have an opportunity to submit in writing, to the Commission, an objection. The objection may be granted by the sole authority of the Administrative Law Judge.
- (4) *Failure to Comply.* In the event that a party has failed to comply with such an order compelling discovery, the Administrative Law Judge may take further actions, including, but not limited to issuing an order:
 - a. prohibiting the non-complying party from introducing evidence or testimony, cross-examining witnesses or otherwise supporting or opposing designated claims or defenses related to the required evidence;
 - b. striking out pleadings or parts thereof when it is determined that there is willful non-compliance with the discovery order;
 - c. mandating that the non-complying party may not be heard to object to the introduction and use of secondary evidence to show what the withheld testimony, documents, records, or other evidence or records would have shown; and
 - d. inferring that the material or testimony is withheld or records not preserved, made, kept produced or made available for inspection because

such testimony, documents, records or other evidence or records would prove to be unfavorable to the non-complying party and use such inferences to establish facts in support of a final determination made by an Administrative Law Judge.

Subchapter C: *Hearings*

§ 3-07. Powers of the Administrative Law Judge, generally. Subject to the provisions set forth in the remainder of these rules, the Administrative Law Judge shall have full power and authority necessary to conduct the hearing, including, but not limited to, the following:

- (1) To schedule and hold hearings;
- (2) To schedule and hold pre-hearing conferences;
- (3) To set submission dates for all applications and memoranda of law;
- (4) To consider and rule on such motions and applications as would facilitate the resolution of the complaint or pre-hearing proceedings;
- (5) To entertain such issues relating to the pre-hearing and hearing process;
- (6) To supervise disclosure in all cases and to allow, deny, limit, condition or regulate the use of any discovery process by a party as to facilitate the presentation of evidence necessary to resolve the complaint or pre-hearing matters;
- (7) To determine whether party or non-party witnesses shall remain present during the hearing;
- (8) To administer oaths and affirmations at the hearing;
- (9) To grant adjournments and continuances;
- (10) To regulate the course of the hearing and conduct of the parties and their counsel;
- (11) To fully control the procedure of the hearing, subject to these rules, and to rule upon all motions and objections, and make recommended orders as to motions to dismiss and summary judgment motions;
- (12) To place evidence in the record without an offer by a party;
- (13) To issue interim or tentative findings of fact at any point during the

hearing process;

- (14) To issue questions delimiting the issues for hearing;
- (15) To rule upon all motions and objections made at the hearing;
- (16) To limit, admit, or exclude testimony or other evidence offered at the hearing;
- (17) To request that the Commission issue subpoenas *ad testificandum* or *duces tecum* in accordance with Section 700.09(h) of the Laws of Westchester County;
- (18) To refuse to consider objections which unnecessarily prolong the presentation of the evidence;
- (19) To foreclose the presentation of evidence that is cumulative, argumentative, or beyond the scope of the case;
- (20) To call and question witnesses;
- (21) To stay or expedite proceedings;
- (22) To order mediation or settlement conferences;
- (23) To propose settlement terms for the parties' consideration at any time during the proceeding;
- (24) To 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;

To propose stipulations of fact for the parties' consideration;
- (25) To issue decisions; and
- (26) To render a written decision, containing recommendations as to findings and, if appropriate, relief.

§ 3-08. Record. The Record in a hearing conducted by an Administrative Law Judge shall include:

- (1) All notices, pleadings, motions, and intermediate rulings;
- (2) Evidence presented;

- (3) A statement of matters officially noticed;
- (4) Questions and offers of proof, objections thereto and rulings thereon;
- (5) Any findings of fact, conclusions of law or other recommendations made by the Administrative Law Judge; and
- (6) Any decision, determination, opinion, order or report rendered.

§ 3-09. Making of Record. A complete record of all hearing or pre-hearing proceedings conducted before an Administrative Law Judge shall be made by whatever means the Commission deems appropriate, including, but not limited to, the use of stenographic transcriptions, electronic recording devices or written notes of the Administrative Law Judge.

§ 3-10. Burden of Proof. The burden of proof shall be on the complainant to establish his or her case by a preponderance of the credible evidence. All decisions, determinations, orders, and final recommendations shall be made by the Administrative Law Judge upon consideration of the record as a whole.

§ 3-11. Hearings.

- (1) *Location.* Hearings shall be held at the Human Rights Commission Office or such other place within Westchester County as may be designated by the Commission.
- (2) *Consolidation.* Two or more complaints involving the same or similar nexus of facts may be scheduled simultaneously before the same Administrative Law Judge, who may consolidate or sever them.
- (3) *Confidentiality.* Attempts at conciliation, or statements made during such attempts, shall not be received in evidence.
- (4) *Allowance of testimony.* The complainant, respondents, parties, and witnesses shall be allowed to present testimony in person or by counsel and cross-examine witnesses.
- (5) *Testimony.* The testimony taken at the hearing shall be under oath and a record of such testimony shall be made.
- (6) *Determination.* At the conclusion of the hearing, or as soon thereafter as may be practicable, the Administrative Law Judge shall issue his or her determination, stating his or her findings of fact.

- (7) Public hearings. Hearings shall be open to the public, except in extraordinary circumstances. Oral testimony shall not be taken in camera. 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.

§ 3-12. Hearings – Preliminary Conference.

The first session of the hearing, for which the parties will be given notice pursuant to § 3-02, 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.
- (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 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.

§ 3-13. Hearings - Procedures.

Notice of Hearing and Defaults

(1) 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.

(2) 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.

(3) 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 or Chief Administrative Law Judge.

New Parties and Necessary Parties

(4) New parties. (1) In the discretion of the Administrative Law Judge, any other person who has a substantial personal interest may be allowed to intervene as a party, in person or by counsel.

(5) 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.

(6) 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.

(7) In the event of such adjournment, the Commission shall serve a new notice of hearing and an amended complaint upon the person so joined and upon all other parties, and shall also serve on the person so joined copies of the previous pleadings and a notice that the prior hearing record may be examined at the Commission's offices during normal business hours, by appointment.

(8) 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.

Trade Secrets and Privacy

(9) 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.

Continuations, adjournments and substitutions of Administrative Law Judge.

(10) 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.

Appointment of Interpreters

(11) Deaf persons. Whenever any deaf person is a party to a hearing, or a witness therein, the Commission shall appoint a qualified interpreter who is certified by a recognized national or New York State credentialing authority to interpret the proceedings to, and the testimony of, such deaf person.

Exclusion of Electronic Devices

(12) The Administrative Law Judge may exclude cell phones, black berries, and other electronic devices from the courtroom during the course of the hearing.

§ 3-14. Hearings – Who Shall Conduct.

(1) Unless the Commission determines otherwise, hearings shall be conducted by an Administrative Law Judge designated by the Commission. All case assignments shall be made by the Commission. All calendaring decisions shall be subject to the approval of the Chief Administrative Law Judge. No person who shall have previously made 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.

§ 3-15. Hearings – Form and Content of Proof.

The Administrative Law Judge, in conducting the hearing, should utilize any procedure consonant with due process to elicit evidence concerning the ultimate issues. The following guidelines shall govern.

(1) The hearing shall not be strictly governed by the rules of evidence observed by courts and hearsay evidence is fully admissible.

(2) There shall be no required order to the presentation of the evidence.

(3) Information from witnesses may be introduced in the form of affidavits, without oral

examination and cross examination.

(4) The parties shall not be denied the right to examine or cross examine a witness.

(5) 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.

(6) In cases in which the witness is unable to come to the hearing for any reason of personal hardship, and where reasonable and convenient, the Administrative Law Judge may permit the testimony of such 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;

(ii) the Administrative Law Judge, reporter and respective attorneys can hear the questions and answers;

(iii) the witness is placed under oath and testifies that he or she is not being coached by any other person.

(8) Oral arguments and briefs. The Administrative Law Judge may permit the parties or their attorneys to argue orally within such time limits as the Administrative Law Judge may determine. Trial briefs will 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.

§ 3-16. Evidence.

(1) *General.* All evidence shall be offered and made part of the record. All documentary evidence may be received in the form of copies of excerpts or incorporated by reference. In such incorporation by reference, the materials so incorporated shall be available for examination by parties before being received in evidence.

(2) *Administrative Law Judge.*

a. The Administrative Law Judge shall not be strictly bound by the rules of evidence observed by courts. However, the Administrative Law Judge shall not submit findings of fact and recommendations to the Commission for review and approval pursuant to § 3-18 of these rules which are based in their entirety on hearsay evidence or entirely on other evidence which is not otherwise admissible in a court of law.

- b. Objections to evidentiary offers may be made and shall be noted in the record. The ultimate admission of evidence, however, will be in the discretion of the Administrative Law Judge.
 - c. The Administrative Law Judge may for the purpose of expediting hearings, and when, in the discretion of the Administrative Law Judge it is determined that the interests of the parties shall not be substantially prejudiced thereby, require portions of the evidence to be submitted in written form or by other alternative means as determined on a case by case basis by the Administrative Law Judge.
- (3) *Cross-examination.* A party shall have the right of cross-examination.
- (4) *Official Notice.* Official notice may be taken of all facts of which judicial notice could be taken.
- (5) *Non-admissible evidence.* Evidence relating to attempts at mediation or conciliation by, between, or among the Commission, the complainant and the respondent shall not be admissible.
- (6) *Rules of Evidence.* The Commission shall not be bound by the strict rules of evidence. However, no decision shall be made which is based in its entirety on hearsay evidence or entirely on other evidence which is not otherwise admissible in a court of law.

Subchapter D: *Decisions and Orders*

§ 3-17. Orders.

- (1) *Format.*
- a. A final decision, determination, recommendation, or order in an adjudicatory proceeding shall be in writing or stated in the record and shall include findings of fact and conclusions of law or reasons for the decision, determination, or recommendation or order.
 - b. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.
 - c. The Commission shall maintain all written final decisions, determinations, recommendations, and orders rendered by the Commission in adjudicatory proceedings. Such written final decision, determination, recommendation or order shall be available for public inspection and copying.

- (2) *Timing.* Any decision, determination, recommendation, or order shall be rendered within sixty (60) days of the hearing.
- (3) *Order Provisions.* In the event that the Commission shall, after a hearing, determine that a respondent has committed an unlawful discriminatory practice, it shall issue an order containing such of the following provisions as may, in the judgment of the Commission, effectuate the purposes of this chapter:
- a. Requiring such respondent to cease and desist from such unlawful discriminatory practice;
 - b. Requiring such respondent to take such affirmative action to remedy the unlawful discriminatory practice, including such of the following as may be applicable and appropriate:
 - i. hiring, reinstatement, or upgrading of employees, with or without back pay;
 - ii. restoration to membership in any respondent labor organization;
 - iii. admission to or participation in a guidance program, apprenticeship training program, on-the-job training program, or other occupational training or retraining program;
 - iv. the extension of full, equal, and unsegregated accommodations, advantages, facilities, and privileges to all persons,
 - v. evaluating applicants for membership in a place of accommodation without discrimination based on group identity or because of a person's status as a victim of domestic violence, sexual abuse or stalking, and without retaliation or discrimination based on opposition to practices forbidden by the Westchester County Human Rights Law or filing a complaint, testifying or assisting in any proceeding under this such law;
 - c. Awarding of compensatory damages, including, but not limited to: actual damages, back pay, front pay, mental anguish, and emotional distress to the person aggrieved by such practice;
 - d. Awarding of punitive damages against each respondent found to have committed an unlawful discriminatory practice which is found to be willful, wanton, or malicious in an amount not to exceed \$10,000.00 to each individual complainant aggrieved by such practice;

- e. Awarding costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees to the person aggrieved by such practice; and
- f. Requiring the respondent to report of the manner of compliance.

(4) *Copies of Order.* A copy of the decision, determination, recommendation, or order shall be delivered or mailed forthwith to each party and/or his attorney of record.

§ 3-18. Commission review of Administrative Law Judge's recommendation and issuance of order. After an Administrative Law Judge has heard a case, he or she shall submit findings of fact and recommendations to the Commission for review and approval. The Commission shall, within thirty (30) days, issue an order adopting, modifying or rejecting, in whole or in part, the findings of fact and recommendations of the Administrative Law Judge, which shall become the Commission's final determination.