

Metropolitan Government of Nashville  
and Davidson County

Rules and Procedures  
for Complaints of  
Discrimination Filed  
with the  
Metropolitan Nashville  
Human Relations Commission

## Table of Contents

## **CHAPTER 1 - RULES AND PROCEDURES**

**1.1      RULE-MAKING AUTHORITY.** These Rules and Procedures are promulgated pursuant to the power and duty vested in the Metropolitan Nashville Human Rights Commission (the "Commission") by the Metropolitan Code of Laws to make such rules as the Commission deems necessary to govern, expedite and effectuate the provisions of Chapter 11.20 of the Metropolitan Code of Laws (1994) as amended (hereinafter the "Metro Code"). The purpose of this manual is to act as an operational guide for the Commission in its enforcement of Chapter 2.132 and Chapter 11.20 of the Metro Code. It specifies the internal procedures, rules, and processes that the Commission has established to govern its process for complaints of discrimination filed with the Commission. It is published on the Commission website to assist the members of the public to understand the operation of the Commission including the procedures necessary to file a complaint regarding a perceived breach of human and civil rights.

**1.2      AMENDMENT TO RULES.** These rules and procedures may be amended from time to time to include new rules, to delete or to revise in some other manner, rules, or portions thereof, as the Commission deems appropriate and necessary. Notice of the proposed changes to the rules shall be given at least five (5) working days in advance of the regular meeting at which the changes are to be considered.

**1.3      SUSPENSION OR WAIVER OF RULES.** To facilitate the proper administration of the Commission and advance justice, any rule contained herein may be suspended or waived by the Commission, unless otherwise provided by law, in order to prevent undue hardship in a particular instance, to prevent surprise or injustice, or to aid in the orderly and fair administration of the Commission.

## **CHAPTER 2 - COMPLAINT PROCESS**

**2.1      FILING.** Complaints within the jurisdiction of the Commission as set forth in in the Charter shall be filed within the appropriate time period at the Commission's office on the forms provided for such purpose. Commission staff designated by the executive director of the Commission (the "Executive Director") shall assist persons desiring to file complaints. Notary services for the required verification of the complaint shall be provided at no cost.

**2.2      CONTENTS.** Each complaint shall contain the following:

- 1) full name and address of the person making the complaint;
- 2) full name and address of the person or persons alleged to have committed the illegal or discriminatory acts and/or practices complained of;
- 3) the type or types of discrimination charged, i.e., race, religion, color, national origin, ancestry, creed, sex, age, disability;
- 4) a statement of particulars of the facts and circumstances establishing the alleged discrimination or discriminatory practice, including the date of the

alleged discriminatory practice. If the illegal discriminatory practice or act is of a continuing nature, the complaint shall include the date between which it is alleged to have occurred or is occurring;

- 5) a statement as to any other action, civil or criminal, instituted in any other forum based on the same facts and circumstances alleged in the complaint, including the date such action was filed together with a statement as to the status or disposition of the action(s); and

**2.3      STAFF CONFERENCE WITH COMPLAINANT.** Upon the filing of the complaint, Commission staff, assigned by the Executor Director, shall meet with the party filing the complaint (the "Complainant") and discuss:

- 1) the right to be represented by an attorney in proceedings before the Commission.
- 2) whether the facts and circumstances alleged appear to set out a violation within the jurisdiction of the Commission;
- 3) the relief which the Complainant believes to be necessary to satisfactorily resolve the complaint;
- 4) the general process and procedure of the Commission upon the filing of a complaint;
- 5) the availability of the Commission to facilitate an informal resolution to the complaint prior to initiation of or during investigation of the complaint if both parties consent to such effort;
- 6) the preliminary investigation and review process by which the Commission determines whether it should or should not continue processing the complaint;
- 7) the efforts that may be undertaken by the Commission upon a finding of probable cause to eliminate the alleged discrimination or discriminatory practice by conciliation and persuasion;
- 8) that after a hearing, the Commission may determine that discrimination or a discriminatory or unlawful practice has occurred and the Commission may exercise any powers and duties after such determination under applicable provisions of the Metro Code; and
- 9) other options that the Complainant has to file his or her civil rights complaint with the Tennessee Human Rights Commission, Equal Employment Opportunity Commission, or the U.S. Housing and Urban Development Department, or any similar authority.

**2.4      SERVICE OF COMPLAINT TO RESPONDENT.** Upon the determination by the Executive Director that the complaint falls within the jurisdiction of the Commission and that the complaint

alleges circumstances that warrant an investigation into whether discrimination or a discriminatory or unlawful practice occurred, the Executive Director shall serve a full copy of the complaint, including the statement of particulars setting out the dates and facts on which the complaint is based, to the party against whom the complaint is filed (the "Respondent"), by telephone, email with acknowledged receipt, or regular mail through the U.S. Postal Service. The Respondent shall be advised that he/she/it has:

- 1) the right to file a written response to the allegations of the complaint within thirty (30) days of service of the complaint upon the Respondent;
- 2) the right to be represented by an attorney in Commission proceedings upon the complaint;
- 3) the right to present evidence at all stages of the investigation and at public hearings; and
- 4) the availability of the Commission to facilitate the informal resolution to the complaint prior to initiation of or during investigation if both parties consent.

**2.5      REPRESENTATION AND PRESERVATION OF RECORDS.** Respondent shall be requested to inform the Commission in writing if an attorney will be representing the Respondent before the Commission in connection with the complaint. Upon receiving such information, the Commission shall make all further contact with Respondent through such attorney. The Respondent shall be informed that any and all records relevant to the investigation and determination of the allegations of the complaint must be preserved until the Commission specifically orders otherwise.

**2.6      ACKNOWLEDGEMENT OF FILING AND SERVICE.** Upon confirmed service of the complaint to the Respondent, the Executive Director shall send a written acknowledgement to Complainant of the filing and service of the complaint. The Complainant shall be advised of the expected time duration for each step of the process to be completed. The Complainant shall be advised and cautioned that the filing with the Commission only protects the Complainant's rights under the Metro Code and that it is the Complainant's responsibility to make inquiry as to the rights and benefits available under other municipal, state, or federal laws with respect to applicable statutes of limitation and to file where appropriate to protect those rights. The Commission may advise the Complainant to seek the advice of legal counsel to advise the Complainant of the applicable statute of limitations or legal remedies or limitations related to the complaint.

**2.7      PROBABLE CAUSE DETERMINATION.** The Commission staff shall conduct an investigation of the complaint and submit a written report to the Executive Director. The Executive Director shall carefully review the summary of investigation and shall request any further inquiry or clarification deemed necessary to allow an appropriate decision as to probable cause that a violation of a complaint under the jurisdiction of the Commission may have occurred. The Executive Director shall determine from all the evidence submitted during the investigation whether there is probable cause to believe that discrimination or an illegal discriminatory practice within the jurisdiction of the Commission may have occurred and shall promptly notify the

Complainant and the Respondent of such determination by email with receipt requested or by regular mail through the U.S. Postal Service. The notice shall contain a brief summary of the information and reasons that support the finding. If no probable cause is found, the Complainant shall be informed of his, her, or its appeal rights.

**2.8      CONCILIATION.** If a finding of probable cause is entered, the Executive Director shall make at least two (2) attempts, by telephone or by mail, to arrange a conference with the Respondent in order to effectuate the conciliation and mediated resolution of the complaint determining what steps must be taken to eliminate the alleged discriminatory or illegal discriminatory practice. The Executive Director shall consult with both parties regarding a resolution to the complaint. The Executive Director shall also take into account the Respondent's particular circumstances in fashioning the terms of the resolution. The Complainant need not be present at conciliation conferences but shall be kept fully informed of all such meetings. The Respondent shall attend and participate in the Commission's efforts to eliminate the alleged discrimination or discriminatory practice through conciliation.

**2.9      CONCILIATION AGREEMENT.** A formal conciliation agreement signed by the Respondent and the Complainant in triplicate shall be submitted to the Executive Director, on behalf of the Commission, for signature. The conciliation agreement shall become effective immediately after all parties sign it. The Executive Director shall set a reasonable time for acceptance and signature by the Complainant. If the Complainant declines to sign the Agreement, the Executive Director shall report the matter to the Commission. If the agreement is acceptable to the Complainant and the Commission, but not to the Respondent, the Executive Director shall determine if further efforts of conciliation should be undertaken or whether the circumstances warrant setting the matter for public hearing.

**2.10     COMPLIANCE REVIEW.** The Commission may require the Respondent to submit periodic reports showing compliance with the terms of the conciliation agreement. The Commission may specify in the compliance agreement remedies in the event of noncompliance.

**2.11     APPEAL OF NO PROBABLE CAUSE.** A Complainant may appeal of a finding of no probable cause" to the Commission. Such appeal shall be filed within thirty (30) days of the Complainant being informed of the "No Probable Cause" determination. The appeal shall be limited to a summary of any newly discovered material evidence that, despite the diligent efforts of the Complainant and the Commission staff, was not available at the time of the determination that "No Probable Cause" was made or that has happened since the finding was entered, or an agency or court decisions rendered in similar circumstances which were overlooked or ignored in the entry of the finding. The Respondent shall be informed when an appeal is pending but may not appear in opposition to the appeal. If the appeal is granted, the Executive Director shall proceed with conciliation efforts as provided in this Rules and Procedures.

**2.12     PUBLIC HEARING.** If there has been a finding of probable cause and conciliation efforts have failed, the Commission may conduct a public hearing at the written request of the Complainant. The written request shall be submitted to the Executive Director within thirty (30) days of the Executive Director's notice that conciliation efforts have failed. Upon receiving a written request for public hearing, the Chair of the Commission shall appoint a panel, consisting of at least

3 commissioners (the "Review Panel"), designating one commissioner as chair, to conduct the hearing. The Executive Director shall notify the Respondent to file an answer to written complaint. Upon receipt of the answer, the Review Panel shall convene with notice to the parties to set the date, time, and place of the hearing.

**2.13 WAIVER OF PUBLIC HEARING.** Where the facts are not in dispute or each party files a written request to waive the public hearing, the Commission shall decide the merits of the case after giving full review and fair consideration to the whole record contained in the Commission's file.

**2.14 WITHDRAWAL OF COMPLAINT.** A complaint may be withdrawn in writing by the Complainant at any time subsequent to its filing. The Executive Director shall then promptly close the Complainant's file. The Commission shall not be precluded by such withdrawal from seeking to eliminate violations of a complaint within its jurisdiction that have come to its attention during the investigation.

**2.15 AMENDMENT OF COMPLAINT.** The complaint may be amended at any time prior to the public hearing and thereafter at the discretion of the Review Panel.

**2.16 TIMELINESS OF CASE PROCESSING.** The Commission staff shall conclude its probable cause determination of each complaint within three (3) months of the date the complaint is filed, unless it is impracticable or impossible to do so. In the event that the Commission is unable to make a probable cause determination within three (3) months, the Executive Director shall notify the Complainant and the Respondent of the reason for the delay in processing the complaint. If there is a probable cause determination and the Executive Director initiates a conciliation process, such process shall be concluded within three (3) months of the probable cause determination. If the conciliation process is not concluded within that time frame, the Complainant shall be notified of his/her right to request a public hearing.

## **CHAPTER 3 - PUBLIC HEARING PROCEDURES**

**3.1 RELIEF AVAILABLE THROUGH A PUBLIC HEARING.** If the Commission conducts a public hearing on a complaint, it shall issue a report and recommendation which it shall post on its website and notify the Mayor and the Council of the results of the hearing. The Commission may also exercise any powers and duties under applicable provisions of the Metro Code.

**3.2 SUBPOENAS OF WITNESSES AND MATERIALS.** The Review Panel may seek information from any person involved with the complaint. If the Review Panel seeks information from any such person and the person fails to provide such information, then the Review Panel or either party may request Metro Council approval to issue subpoenas for the appearance of witnesses or the production of documents at the hearing. Such requests shall be submitted in writing to the Review Panel including the person or documents to be produced and the reason for the need of a subpoena. The Review Panel, in its discretion, may grant or deny, the request for a subpoena. If a subpoena approved by the Review Panel and by the Council is not complied with, the Review Panel may (1) report such contempt to the Davidson County Chancery Court and petition the court to compel the person or documents to be produced and (2) take such refusal into consideration when determining the

merits of the complaint.

**3.3      PRE-HEARING CONFERENCE.** The notice of public hearing provided under these rules shall include notice of the time and place for the pre-hearing conference. At such time the Review Panel shall conduct a pre-hearing conference for the following purposes:

- 1) formulation and simplification of the issues;
- 2) identification of the witnesses to be called to testify and the documents to be offered into evidence as exhibits;
- 3) stipulation of facts not in dispute and of the authenticity of documents;
- 4) resolution of any contested evidentiary matters; and
- 5) disposition of such other matters as may expedite the orderly conduct of the public hearing.

**3.4      CONDUCT OF PUBLIC HEARINGS.** Public hearings shall be conducted by the Review Panel. The Review Panel shall have full authority to conduct the hearing in a fair and impartial manner, to admit or exclude testimony or other evidence, and to rule upon all motions and objections. The Commission shall endeavor to observe the Tennessee Rules of Civil Procedure. All rulings and determinations of the Review Panel shall be by majority vote. The Review Panel may participate in the examination of the witnesses after the parties have concluded their examinations. They may ask for additional evidence from any party introduced into evidence if such evidence is deemed material by the Review Panel to the resolution of the complaint. All witnesses shall be sworn or shall otherwise affirm the truth of their testimony by the Chair of the Review Panel. Either party may arrange to have a Court Reporter present at any hearing at their own expense.

**3.5      PRESENTATION OF EVIDENCE.** The case in support of or in opposition to the complaint shall be presented through direct testimony and opportunity for cross-examination shall be provided. All relevant and material evidence shall be admissible, unless such evidence is unduly repetitious or cumulative. Immaterial or irrelevant evidence shall not be admitted into evidence.

**3.6      CONSOLIDATION.** The Review Panel on motion of the parties or on motion of the Commission may consolidate complaints with common issues of law and fact for hearing. In proceedings that have been consolidated for hearing, the chair of the Review Panel shall direct which party is to present evidence first.

**3.7      OBJECTIONS.** When an objection to the admission or exclusion of evidence is made, the grounds relied upon shall be stated briefly. Any objection not raised when evidence is presented shall be deemed waived.

**3.8      STIPULATIONS.** The parties may stipulate to any facts which are relevant to the



proceedings. Oral stipulations may be made on the record at the public hearing.

**3.9 FILING OF ADDITIONAL EVIDENCE.** The Review Panel may, in its discretion, keep the record open to allow for the filing of specific documentary evidence as a supplement to the record and to allow any party affected by such evidence to file a written response to it within the time fixed at the hearing for such filings.

**3.10 ORAL ARGUMENTS AND BRIEFS.** The parties shall be allowed to make opening and closing arguments at the hearing or to file post-hearing briefs within such time limits as the Review Panel establishes.

**3.11 CONTINUANCES.** The Review Panel may postpone a scheduled hearing or continue a hearing to a later day by announcement thereof at the hearing or by appropriate notice to all parties. Such continuance shall be granted only for good cause shown, which may include the potential for settlement of the complaint.

**3.12 RECORD OF PROCEEDINGS.** All testimony and proceedings at the public hearing shall be recorded and retained in an appropriate manner by the Commission. Upon request, a copy of the recording shall be provided in order to have the recording transcribed in written form.

**3.13 DISQUALIFICATION.** Any member of the Review Panel shall recuse him or herself, or otherwise be removed, from a proceeding if it first appears that such individual has any interest in the matters at issue, has involvement with circumstances at issue or is otherwise not able to exercise fair and impartial judgment on behalf of the Commission.

**3.14 EX PARTE COMMUNICATIONS.** The Review Panel shall not communicate *ex parte* either directly or indirectly with any party or other person involved in the proceeding concerning any issue of law or fact for which a hearing has been scheduled. This prohibition shall likewise prohibit any such communication being made by such person or party to the hearing. The prohibition shall be in effect until the final order of the Commission is entered or the judicial review process is completed and a final court order is entered, whichever is later.

**3.15 FINDING OF NO DISCRIMINATION AFTER PUBLIC HEARING.** If the Review Panel decides that, upon a preponderance of the evidence, the Respondent has not engaged in the alleged discrimination or illegal discriminatory act, written findings of such decision shall be entered and the complaint shall be dismissed. Such dismissal shall constitute a final order by the Commission.

**3.16 FINDING OF DISCRIMINATION AFTER PUBLIC HEARING.** If the Review Panel decides, based on a preponderance of the evidence, that the Respondent has engaged in discrimination or an illegal discriminatory practice, written findings of fact, conclusions of law, and a proposed order shall be forwarded to the parties and the Commission. The Chair shall establish the date, time, and place at which the Commission will review the recommended decision. Exceptions to the proposed findings, conclusions, and order may be filed by the parties with supporting brief not later than ten (10) days prior to the Commission's deliberations. The exceptions shall state with particularity the points of law or fact which it is claimed were overlooked

or misinterpreted in the proposed decision.

**3.17      CONCURRENCE OF COMMISSION IN PROPOSED ORDER.** Upon review of the whole record and any and all exceptions filed, if the Commission concurs in all respects with the proposed decision, a final order to such effect shall be entered.

**3.18      DISAGREEMENT OF COMMISSION WITH PROPOSED ORDER.** If upon review of the whole record and any and all exceptions filed, the Commission disagrees with any portion of the proposed order, a hearing to allow oral argument on the matters in the proposed decision with which the Commission disagrees may be held. The Review Panels finding of fact are binding upon the Commission. No new evidence shall be admitted at the hearing. The Commission, after affording the Complainant, the Respondent, and Commission staff the opportunity to be heard, shall enter the written findings, conclusions, the cease-and-desist request, and the affirmative action it deems appropriate to remedy the discrimination or illegal discriminatory practice. The Complainant and the Respondent shall be informed this decision constitutes a final order of the Commission.