

Metropolitan Government of Nashville
and Davidson County

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

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 Relations 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 2.132 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 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 Metro Code shall be filed within a reasonable time following the circumstances giving rise to a complaint at the Commission's office on the forms provided for such purpose. Complaints shall be in writing and sworn to or affirmed before a notary public or supported by a declaration in writing under penalty of perjury. 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.

Commented [CT1]: Is there a statute of limitations concerning complaints that would come before MHRC?

Commented [CT2]: Is there a legal requirement dictating that a complaint has to be signed by a notary or supported by such declaration? If not, then what will be the issues with simply having a document in writing that a Complainant signs?

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;
- 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 alleged 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; and

- 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).

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, after such determination, the Commission may exercise any powers and duties under applicable provisions of the Metro Code; and
- 9) other options that the Complainant may have 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 Delivery Confirmation Mail Service from the U.S. Postal Service or by hand delivery, with acceptance of service provided (collectively, "Mail Notice"). 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 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 the complaint. 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 report the findings to the Commission. The Executive Director shall also notify the Complainant and the Respondent of the findings by Mail

Commented [MG3]: Legal recommends the complaint be served by U.S. Mail.

Commented [CT4]: Will this create any undue hardship on the MHRC staff or the complaint process? Please assess this question under each provision requiring notice be submitted in this manner.

Notice. The notice shall contain a summary of the information and reasons that support the finding. If no probable cause is found, then the Complainant shall be informed of the right to apply to the Commission for an appeal under Section 2.11 of these Rules and Procedures.

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, as more particularly described in these Rules and Procedures.

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 shall strongly recommend to the Complainant and Respondent that the conciliation agreement include remedies for material failures of the terms and conditions under the conciliation agreement. If either party commits a material failure under the conciliation agreement that is not cured within a reasonable time or such time specified under the conciliation agreement, then the Commission may recommend the nonfailing party seek a legal remedy for such failure.

2.11 APPEAL OF NO PROBABLE CAUSE FINDING. The Complainant may file with the Commission an application for appeal of a finding of no probable cause. Such appeal shall be filed within thirty (30) days of the Complainant being informed of the "No Probable Cause" determination and must be in writing, specifically stating the grounds upon which it is based. The grounds for appeal shall be limited to (1) a summary of any newly discovered material evidence which occurred prior to the complaint being filed that, despite the diligent efforts of the Complainant and the Commission staff, was not available at the time the determination of "No Probable Cause" was made or (2) agency or court decisions rendered in similar circumstances were overlooked or ignored in the entry of the "No Probable Cause" finding. Upon receipt of an appeal, the Executive Director shall notify the Respondent of such appeal by Mail Notice, and the Executive Director shall reconsider the complaint. The Executive Director shall also notify the Commission of the appeal. The Executive Director shall notify the Complainant and Respondent of the final decision of the appeal by Mail Notice, and the Executive Director shall also notify the Commission of such decision.

Commented [MG5]: Legal recommends as a best practice that the mediator be insulated from the investigative function in order to maintain separation of roles and confidentiality of the mediation process.

Legal also recommends adding a provision which states that if a complaint moves to a hearing, no testimony can be given regarding offers, counteroffers, statements made, or conduct during conciliation efforts. This is included in the THRC's rules and is also in line with Federal and Tennessee Rules of Evidence. See Section 3.5 for proposed language.

Commented [CT6R5]: Concerning the first recommendation that the mediator be insulated from the investigative function, what does Legal suggest? If the Metro Code gives MHRC both the ability to investigate and conciliate, then is there an issue with MHRC delegating both to the same person on the MHRC staff?

If the appeal is granted, the Executive Director shall proceed with conciliation efforts provided in this Rules and Procedures and the remaining terms of these Rules and Procedures shall control. If there is newly discovered material evidence of alleged discriminatory practices that occurred on or after the date that the complaint was filed, then the Complainant shall file a new complaint, and such new complaint will be governed by these 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 the 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. If the Commission elects to conduct a public hearing pursuant to Section 2.12 above and the facts are not in dispute or each party files a written request to waive the public hearing, the Commission may 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, or any part thereof, may be withdrawn in writing by the Complainant at any time subsequent to a decision of probable cause. 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 DISMISSAL OF COMPLAINT. The Commission or the Executive Director may dismiss a complaint at any time, for reasons including, but not limited to, lack of probable cause, lack of jurisdiction, or lack of the Complainant's cooperation, whether upon the face of the complaint, after investigation, or during the conciliation process. If a complaint is dismissed, then the Executive Director shall notify the parties of such determination by Mail Notice.

2.17 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 staff 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.

Commented [MG7]: Why has the first part of this provision been removed? Legal recommends that the language remain as the MHRC cannot exceed its jurisdictional limitations in amending a complaint. This provision is also unclear about who may amend the complaint, whose discretion is required and when. The parameters of what may be amended are also unclear in this provision, i.e., does an amendment include the substitution or addition of new parties? Legal recommends consideration be made toward specifying this rule and including any additional rules regarding addition or substitution of parties.

Commented [CT8R7]: Including the phrase that was removed seems superfluous. Everything contained in these rules is subject to the jurisdictional limitations of the Metro Code. What is the value of adding this language here as opposed to any other provision in the rules? So long as the MHRC does not exceed its jurisdictional limits on the types of complaints it can investigate, what legal limitations does Legal believe limit MHRC's ability to amend the complaints? Additionally, note this language was in the original rules.

Commented [MG9]: Is the 3 month limitation practical in all circumstances for probable cause determinations and for conciliation efforts?

Commented [CT10R9]: The three-month limitation may not be practical in all situations, but fast resolution of the complaints may be necessary to preserve other legal rights the complainant may want to seek. As a result, MHRC should seek a quick resolution to preserve such rights.

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, and the Complainant and the Respondent may request the Review Panel to seek any such information. Requests for the appearance of witnesses at a hearing or to produce documents shall be submitted in writing to the Review Panel. Such requests shall include the name of the person or persons whose appearance is sought or the documents to be produced and the reason for the need of such appearance or documents. The Review Panel, in its discretion, may grant or deny the Complainant or Respondent's request for appearance of witnesses or production of documents. If the Review Panel seeks information from any person and the person fails to appear or provide such information, then the Review Panel may (1) apply to the Chancery Court for an order requiring that the order of the Commission be obeyed pursuant to Section 18.10 of the Metro Code or (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

Commented [MG11]: Legal recommends this revision in light of the authority granted in Section 18.10 of the Metro Charter, but within the limits of the jurisdiction of the MHRC for investigations and hearings involving alleged discriminatory conduct by Metro employees and Metro contractors pursuant to M.C.L. 2.132.070(A).

Commented [CT12R11]: General agreement on the concept, except the Metro Code does not appear to limit MHRC's jurisdiction to metro employees or contractors. E.g., Section 2.132.070 (A)(3) of the Metro Code states MHRC can seek information from "persons, agencies, and businesses" without qualifying these parties must be metro contractors or employees. Similarly, Section 2.132.070 (A)(4) states MHRC can investigate "other discriminatory" practices, which is not qualified to metro gov't discriminatory practices.

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. No testimony or evidence shall be given or received concerning any offers, counteroffers, statements made or conduct during efforts to conciliate the complaint.

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 timely urged before the Review Panel 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 personal interest in the matters at issue, has personal 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

Commented [MG13]: Legal recommends consideration of including a provision that all hearings shall be conducted in accordance with the Tennessee Uniform Administrative Procedures Act, T.C.A. 4-5-101 et seq., which would address procedural and evidentiary issues.

Commented [CT14R13]: Will conciliation agreements and MHRC decisions be valid without adopting the provisions of this uniform act?

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 Panel's 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 of fact and conclusion. The Complainant and the Respondent shall be informed this decision constitutes a final order of the Commission.