



Hearings Before
The
Human Rights Commission

A Guide to the Adjudication Process

September 2003

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Background

The District of Columbia Commission on Human Rights is an independent agency that adjudicates private sector discrimination complaints certified by the Office of Human Rights. The Commission is composed of (15) fifteen commissioners who are appointed by the mayor; full time hearing examiners and support staff. The hearing is conducted before either a hearing examiner or a panel of commissioners. In most cases, the complaints are adjudicated before a hearing examiner who is the equivalent of an administrative law judge. Upon a finding of discrimination, the Commission may issue injunctive relief, affirmative action and award damages including front and back pay, compensatory damages, civil penalties and attorney's fees. Appeals of all Commission decisions may be brought before the D.C. Court of Appeals.

The purpose of this booklet is to guide you through the adjudication of your complaint before the District of Columbia Commission on Human Rights.

Governing Rules

The rules that govern these proceedings are **Rules of Procedure for Contested Cases**, 4 DCMR § 400 *et seq.* (1995) and **Guidelines for Payment of Compensatory Damages, Civil Penalties, And Attorney's Fees Under the Human Rights Act of 1977**, 4 DCMR §200 *et seq.* (1999). Both of these rules may be found on the web at www.ohr.dc.gov under the section for the Human Rights Commission.



I. CERTIFICATION OF COMPLAINT

The first step in the adjudication process is the Office of Human Rights (OHR) certifying your complaint before the Commission. This occurs after the OHR finds that probable cause (likelihood of discrimination) has occurred and conciliation of the complaint has failed. The certification of the complaint does the following:

- A. Gives the Commission jurisdiction of your complaint, and**
- B. Allows your complaint to become a public matter.**

The only issues that the Commission may adjudicate are those that the OHR has found probable cause.

Once the case is certified to the Commission, you will receive a notice from the Commission within one week stating that:

- A. Your case is before the Commission for a public hearing,**
- B. The rules that govern the proceeding are 4 DCMR §§ 200 and 400,**
- C. The Commission will assign a hearing examiner to your case, and**
- D. You are entitled to representation from the OHR if you do not have a private attorney.**

Note: That the proceeding before the Commission is a trial *de novo*. That is all of the evidence used to make the probable cause determination at the OHR is not before the Commission. You must start the process “a new”. The Commission only receives a copy of the complaint with any amendments and the Letter of Determination. Any evidence submitted during the investigation at the OHR may be introduced at the hearing, notwithstanding any issue of relevancy.



II. THE STATUS CONFERENCE

Within (30) thirty-days of certification, you will receive a notice from the hearing examiner scheduling the status conference for your case. In this conference, you and the opposing party will meet with the hearing examiner to discuss the following:

- A. Hearing procedures before the Commission,**
- B. Deadlines for discovery,**
- C. Deadlines for filing dispositive motions,**
- D. Date for filing pre-hearing statement,**
- E. Date for pre-hearing conference,**
- F. Date for hearing,**
- G. The 417 Automatic Disclosure Rule which states that both parties within (30) thirty-days of the status conference must provide each other a list of witnesses who have**

information regarding the issues and a list of exhibits that are relevant, including a statement where the exhibits may be found, and

H. Subpoena authority of the Commission and the issuance of the subpoenas.

NOTE: If an attorney who will be at the status conference is representing you, your presence at the status conference is optional.

The status conference usually takes approximately 30 to 45 minutes.

Within (5) five-days of the status conference, the hearing examiner will issue a scheduling order, outlining discussions and dates that were agreed upon during the conference.



III. THE DISCOVERY PERIOD

In addition to providing information to the other party through the automatic disclosure rule, you are entitled to full discovery. This is a pre-hearing device that can

be used by one party to obtain facts and information about the case from the other party in order to assist the party's preparation for the hearing. You are entitled to the following types of discovery devices:

- A. Depositions**
- B. Interrogatories**
- C. Production of documents**
- D. Permission to enter premises**
- E. Physical or mental examination by a qualified practitioner**
- F. Requests for admissions.**

The hearing examiner generally allows up to (4) four months of discovery. If a party seeks an enlargement of time, that party must file a motion requesting additional time for discovery and state a substantial need for the additional time. The full discovery period begins immediately after the status conference and will end on the date that was agreed by the parties and the hearing examiner during the status conference.



IV. DISPOSITIVE MOTIONS

At the close of discovery and before the filing of the pre-hearing statement, a party has the option to file a dispositive motion such as a Motion for Summary Judgment. These motions are filed by a party who believes that there is no genuine issue of material fact in dispute and that the party is entitled to prevail as a matter of law. If the Commission grants the motion, the adjudication of your case will end at that point. The losing party will have a right to appeal to the D.C. Court of Appeals. If the Commission denies the motion, then the adjudication of your complaint will proceed with the next step of filing pre-hearing statements and you attending a pre-hearing conference.



V. FILING OF PRE-HEARING STATEMENTS

After the parties completed discovery and the Commission resolved all dispositive motions, if any,

each party is required, pursuant to the scheduling order issued by the hearing examiner and 4 DCMR § 413.3, to file before the Commission a pre-hearing statement. Each statement should have the following:

- A. A short and precise statement of the factual and legal issues that are to be adjudicated before the Commission,**
- B. A list of all witnesses, their approximate length of testimony and proffers of relevancy,**
- C. A list of all exhibits to be offered and proffers of relevancy, and**
- D. The Complainant must also prepare a statement of remedies to be sought from the Commission.**

In addition to filing these statements with the Commission, each party must serve a copy to each party to the proceeding.



VI. THE PRE-HEARING CONFERENCE

Pursuant to the scheduling order issued by the hearing examiner and 4 DCMR §413, all parties and representatives must attend a pre-hearing conference before the hearing examiner. This is a mandatory meeting for all parties. The meeting is scheduled after the filing of the pre-hearing statements and it is usually scheduled a few days before the hearing. It generally takes approximately (2) two hours to conduct. At this conference, the hearing examiner and the parties will discuss the following:

- A. The possibility of settlement,**
- B. The possibility of stipulating to facts in order to narrow the issues and shorten the length of the hearing,**
- C. Relevancy of witnesses listed on the pre-hearing statements,**
- D. Relevancy of exhibits listed on the pre-hearing statements,**

E. Any last minute motions, and

F. How the hearing will be conducted.



VII. THE HEARING

A few days after the pre-hearing conference and pursuant to the scheduling order and 4 DCMR §419, the hearing examiner will conduct a hearing. Depending on the size of the case, the hearing may last from a few hours to a few days. It is a full evidentiary hearing in a “trial-type setting” with testimony giving by a witness who is subject to cross-examination. Admission of documents is also presented in the hearing. The hearing is governed by the District of Columbia Administrative Procedure Act, the Human Rights Act of 1977 and the Rules of Procedure for Contested Cases, 4 DCMR §400 *et seq.* The rules of evidence concerning relevancy applies to the proceeding as well as rules regarding privileges. The admission of hearsay evidence is discretionary. The hearing is the official record of the proceeding, which the Commission will make its final ruling from. A court reporter will record and transcribe the proceeding. Parties may obtain a copy of

the transcript through the court reporter service. The format of the hearing is as follows:

- A. Opening statement by the Hearing Examiner**
- B. Opening statement by Complainant's Counsel**
- C. Opening statement by Respondent's Counsel (optional)**
- D. Complainant's case in chief**
- E. Respondent requesting a directed verdict for failing to establish a case of discrimination (optional)**
- F. Respondent's case in chief**
- G. Complainant's rebuttal case**
- H. Respondent's surrebuttal case (optional)**
- I. Closing arguments (optional)**



VIII. POST HEARING BRIEFS

At the conclusion of the hearing, the hearing examiner will issue a scheduling order that governs the filing of post-hearing briefs. Depending on the size of the case, these briefs are due between (45) forty-five days to (60) sixty-days from the time the hearing transcripts are returned to the Commission. The post-hearing briefs should contain the following:

- A. Proposed findings of facts that you want the hearing examiner to consider, and**
- B. Proposed conclusions of law with legal analysis that you want the hearing examiner to consider.**

These briefs must be filed with the Commission and copies served to each party to the proceeding. A party has (15) fifteen-days to respond to the opposing parties brief. Those responses also must be filed with the Commission and served on each party to the proceeding.



IX. THE PROPOSED DECISION AND ORDER

After the filing of the post-hearing briefs, the hearing examiner will review the record including the transcript of the hearing, his or her notes of the hearing, the post-hearing briefs and issue a proposed decision and order to the parties and to the Commission tribunal (3-member panel of commissioners who are assigned to issue the final decision). This decision is a recommendation to the Commission regarding how they should finally rule. The proposed decision contains proposed findings of fact, proposed conclusions of law and a recommended order including any remedies. Depending on the size of the record and the amount of cases on the docket, the drafting of the proposed order may take (3) three to (5) five months after the post-hearing briefs are filed.



X. EXCEPTIONS TO PROPOSED DECISION

Within (15) fifteen days of the issuance of the proposed decision and order, each party may file exceptions to the proposed decision. The exceptions are a form of an appeal that is considered by the tribunal of Commissioners who will render the final decision and order in the case. In the exceptions, a party may argue that the proposed findings of fact are not supported by the record or that the hearing examiner failed to consider a material fact in his or her decision. The parties may also point out that the conclusions of law are flawed or they do not flow rationally from the findings of fact.

These exceptions are filed before the Commission in triplicate and a copy is served on each party to the proceeding.

An opposing party may have (10) days to file a response to the exceptions to the proposed decision.



X. TRIBUNAL MEETING **And Final Decisions and Orders**

Once the exceptions to the proposed decision and order are filed, the (3) three-member panel of Commissioners who are assigned to render a final decision will take up the record and review the proceedings including reviewing the hearing transcript, the proposed decision and the exceptions. In a closed meeting, the Commissioners will deliberate the case and determine whether to accept, reject or modify the hearing examiner's recommendation. If the tribunal accepts the decision, the Commissioners will sign the decision and issue it. If the tribunal modifies or rejects the decision, they will rewrite all or a portion of the decision and issue the ruling.

Generally, the Commission may take approximately (60) sixty days to review and issue a decision.



XI. APPEALS

Any party whom is aggrieved by the decision of the Commission has the following options:

A. File a Motion for Reconsideration before the Commission requesting it to reconsider its ruling. This motion must be filed before the Commission within (15) days of the issuance of the Final Decision and Order. Reconsiderations are based on the following:

- 1. Discovery of competent, relevant, and material evidence that was not reasonable discoverable during the course of the hearing process,**
- 2. Failure of the tribunal to consider particular items of competent, relevant, and material evidence that were admitted into the record of the hearing process,**
- 3. Failure of the hearing examiner to admit into the record competent, relevant, and material evidence that**

was proffered during the hearing process.

- B. File a Petition for Review with the District of Columbia Court of Appeals within (30) thirty days of the issuance of the final decision and order.

NOTE: YOU DO NOT HAVE TO FILE A MOTION FOR RECONSIDERATION BEFORE FILING A PEITITION FOR REVIEW AT THE D.C. COURT OF APPEALS.



XII. ATTORNEY'S FEES

A successful Complainant may seek attorney's fees from the respondent. The attorney fee petition should be filed between the 20th and the 30th day after the issuance of the final decision and order.



QUALIFICATIONS OF HEARING EXAMINERS

Hearing Examiners that adjudicate your case at the Human Rights Commission have the following qualifications:

- 1. A licensed attorney with past experience in civil rights law,**
- 2. Ability to conduct a hearing in accordance with the District of Columbia Administrative Procedure Act and the Human Rights Act.**
- 3. An even temperament that demonstrates that the hearing examiner can conduct a hearing in an impartial manner,**
- 4. Able to disclose all actual and potential conflicts of interest reasonable known by the hearing examiner.**



QUESTIONS AND ANSWERS

- 1. What is the difference between the proceeding at the Office of Human Rights and the proceeding at the Commission on Human Rights?**

The proceeding before the Office of Human Rights is an investigation of your complaint that determines whether there has been a possible violation of the Human Rights Act. The probable cause determination is sort of an indictment against the respondent. The proceedings before the Commission on Human Rights is a “trial-type” proceeding based on the probable cause determination. If the complainant wins his or her case at the Commission, the decision is a finding of discrimination.

- 2. How long will it take to adjudicate my complaint?**

Depending of the complexity of the case, the amount of discovery, each case becomes different in time length. However, a complaint that has

been certified to the Commission with a single issue that is not complex should take approximately 14 months from certification?

- 3. Does the Commission require a fee to adjudicate a case?**

No! There is no fee requirement at the Human Rights Commission. Adjudication of a case before the Human Rights Commission is free. However, you must keep in mind that if you have a private attorney representing you, the attorney fee arrangements are between you and the attorney.

- 4. Can I have my case expedited?**

The Commission only expedites cases in matters when the Complainant is very ill and time is a factor with regard to his or her life expectancy.

- 5. Are the decisions of the Commission enforceable?**

Yes! If a respondent fails to abide by a final Commission order, the Commission may seek enforcement of the order in the District of Columbia Superior Court.



Notice of Non-Discrimination

In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code Section 2-1401.01 et seq. (Act) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.