

## **TITLE 515 – COMMISSION FOR HUMAN RIGHTS**

### **CHAPTER 10 – OPERATION**

#### **SUBCHAPTER 00 – N/A**

##### **PART 2 – Procedure**

### **2.1 Authorization**

The following Regulations of the Rhode Island Commission for Human Rights were adopted in accordance with the Administrative Procedures Act. They were originally filed on August 9, 1979. Amendments were filed on September 24, 1985, February 23, 1993, June 21, 2001, and October 30, 2001. The Regulations are promulgated in accordance with R.I. Gen. Laws §§ 11-24-4, 28-5-13(4), 34-37-6(j), 40-9.1-4 and 42-87-5(a).

### **2.2 Method of Operations**

A. Function. In addition to such other duties as may from time to time be delegated to it by law, it is the function of the Commission pursuant to the law to enforce R.I. Gen. Laws Chapters 28-5, 28-5.1, 34-37, 11-24, 40-9.1, 42-87, and R.I. Gen. Laws §§ 23-6.3-11 and 23-6.3-12, which prohibit discrimination:

1. because of race, color, religion, country of ancestral origin, disability, sex, sexual orientation, gender identity or expression, or age (at least forty (40) years of age) in the area of employment;
2. because of race, color, association, religion, sex, sexual orientation, gender identity or expression, marital status, familial status, country of ancestral origin, status as a victim of domestic abuse, housing status, military status, disability or age (over eighteen years) in the area of housing;
3. because of race, color, religion, sex, sexual orientation, gender identity or expression, marital status, familial status, country of ancestral origin, military status, disability or age (over eighteen years) in the area of credit;
4. because of race, color, religion, country of ancestral origin, disability, sex, sexual orientation, gender identity or expression, or age (over eighteen (18) years) in the area of public accommodations;

5. because of disability with respect to any entity doing business in the state, exclusion from participation in or denial of benefits of any program, activity or service of, or by any person or entity regulated by the state, or having received financial assistance from the state (except for complaints concerning the physical inaccessibility of buildings and structures);
  6. because of a positive HIV test result, or perception of same, in the areas of housing, employment, credit, public accommodations, education or delivery of services;
  7. because of the presence of a personal assistance animal accompanying a person with disabilities or accompanying a trainer or puppy raiser of a personal assistance animal in the areas of housing, public accommodations, and education;
  8. because of the presence or desired presence of a personal assistive animal or emotional support animal for a person with disabilities, in the area of housing;
  9. because of making a charge of discrimination, testifying or assisting in any manner in any investigation, proceeding, or hearing under the anti-discrimination laws enforced by the Commission, or otherwise opposing practices prohibited by the laws governing the Commission;
  10. in the form of a direct or indirect inquiry as to whether an applicant or employee has been arrested or charged with any crime, absent the exceptions enumerated in the Fair Employment Practices Act.
  11. in the form of a direct or indirect inquiry, prior to the first interview, as to whether an applicant has been convicted of a crime, absent the exceptions covered in the Fair Employment Practices Act.
- B. Method of Operations. The Commission receives charges of discrimination, investigates the allegations and endeavors to eliminate unlawful practices by informal methods of conciliation. When informal methods do not resolve a charge or complaint, the Commission conducts a hearing on the complaint. When, after said hearing, the Commission finds a violation, it issues a Decision and Order requiring a respondent to cease and desist from any unlawful practices and to take such affirmative or other action as will effectuate the purposes of the law. When, after said hearing, the Commission does not find a violation, it shall dismiss the complaint against the respondent in a Decision and Order served on the parties.
- C. Meetings. The Commission shall meet at such times as may be established by the Commission. The Chairperson or any two members of the Commission may

call special meetings of the Commission. Subject to the provisions of these Regulations governing hearings, any business of the Commission may be transacted at any meetings, regular or special. Notice of each meeting shall be provided to the members of the Commission not less than three days before the date thereof provided that a lesser notice may be given upon a determination by the Chairperson or any two members of the Commission that urgent need exists for an emergency meeting of the Commission. The Commission may consider only the specific emergency matter that warranted calling the emergency meeting. The Commission shall post written public notice of its meetings at Commission Headquarters and in the manner prescribed by the Rhode Island Open Meetings Act.

## **2.3 Practice before the Commission**

- A. **Appearances.** Any person may appear before the Commission in their own behalf. No person may appear in a representative capacity before the Commission unless authorized by law, court order or court rule to do so.
- B. **Standards of Conduct.** All persons appearing in proceedings before the Commission in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of Rhode Island. If any such person does not conform to such standards, the Commission may decline to permit such person to appear in a representative capacity in any proceeding before the Commission.

## **2.4 Charge**

- A. **Who May File.** Any person or organization who claims to be aggrieved by an alleged discriminatory practice may make, sign and file a written charge with the Commission at any of its offices. Commission staff do not provide legal advice.
- B. **Charges Initiated by the Commission.** The Commission may initiate charges. One Commissioner or the Director may initiate and file a charge in the name of the Commission. A Commissioner who files or approves the filing of a charge shall not participate as Preliminary Investigating Commissioner, nor shall they hear the complaint or participate in a decision on the complaint.
- C. **Form of Charge.** The charge shall be in writing. The original charge, signed and verified by the complainant before a notary public or other person duly authorized by law to administer oaths, shall be filed with the Commission. Notary services, when available, shall be furnished without charge by the Commission.
- D. **Content of Charge.** A charge shall contain, at a minimum, the following:

1. The full name and address for the person making the charge;
  2. The full name and address of the person against whom the charge is made;
  3. A concise statement of facts which the complainant believes constitutes an unlawful discriminatory practice;
  4. The date(s) of the alleged unlawful discriminatory practice or, if the alleged unlawful discriminatory practice is of a continuing nature, the dates between which said continuous acts are alleged to have occurred.
- E. Time of Filing. For cases alleging discrimination other than housing or credit discrimination, charges must be filed no later than within one (1) year after an alleged unfair practice occurred, terminated or was applied adversely to affect the person aggrieved, whichever is later, as provided in R.I. Gen. Laws § 28-5-17. Under R.I. Gen. Laws § 34-37-5(b), a complainant must file a charge of housing or credit discrimination within one (1) year of the date the unlawful practice occurred or terminated. Time limits for filing with federal agencies may be different than the time limits under state law.
- F. Calculation of Time. Whenever time is to be calculated, the day when the act is done shall not be included in the computation. The last day of the period is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday.
- G. Place of Filing. A charge may be filed with the Commission in person at its office or by way of mail. All information needed to contact the Commission can be found on its website, <http://www.richr.ri.gov/>.
- H. Withdrawal of Charge. A charge or any part thereof may be withdrawn by the complainant at any time prior to the issuance of a complaint by the Commission or final disposition of the charge. All withdrawals must be in writing, signed by the complainant or their attorney and signed by the Director.
- I. Other Forms and Amendment of Charges. Notwithstanding any other provisions in this Chapter, a charge is deemed filed when the Commission receives from a person a written statement that is sufficiently precise to identify the parties and to describe generally the action or practices complained of. A charge or any part thereof may be amended to cure technical defects or omissions, including failure to swear to the charge, or to clarify and amplify allegations made therein, and such amendments relate back to the original filing date; provided, however, an amendment alleging additional acts constituting unlawful discriminatory practices not related to or growing out of the subject matter of the original charge will be

permitted only where, at the date of the amendment, the allegation could have been timely filed as a separate charge.

- J. Joinder of Parties in the Same Charge. Persons complaining of unlawful discriminatory practices arising out of the same transaction, occurrence, or succession or series of transactions or occurrences may join as complainants in a single charge. All persons charged with unlawful discriminatory practices arising out of the same transaction, occurrence or succession or series of transactions may be joined as respondents in the same charge.
- K. Service of Charge. Notice of the charge and a copy of the charge shall be mailed to the respondent within twenty (20) calendar days of receipt of the charge by the Commission.
- L. Response to Charge. Respondents may submit a written reply stating their position on the charge. General denials are not permitted.
- M. Dismissal for Lack of Jurisdiction. If the Commission determines that it has no jurisdiction over a charge, the charge shall be dismissed.
- N. Administrative Closures. A charge may be administratively closed by the Commission:
  - 1. after notice to the complainant at their last known address and providing an opportunity to object, based on failure to locate a complainant or a complainant's failure to cooperate; or,
  - 2. after notice to the last known address of the complainant and to their estate, if any, and providing an opportunity to object, when a complainant has died and either the Commission cannot locate the complainant's estate or the personal representative of the complainant's estate fails to proceed with the charge;
  - 3. after notice to the complainant at their last known address, providing an opportunity to object, if:
    - a. the respondent has filed for bankruptcy; and,
    - b. the Director concludes, after review of the bankruptcy proceedings, that circumstances warrant an administrative closure.
  - 4. after notice to the complainant at their last known address providing an opportunity to object if:
    - a. the respondent is in receivership; and,

- b. the Director concludes, after review of the receivership proceedings, that circumstances warrant an administrative closure.

## **2.5 Preliminary Investigation and Disposition**

- A. Preliminary Investigation. Whenever authorized by law, the Commission may conduct preliminary investigations into matters under its jurisdiction, or may cooperate with another agency in the investigation into matters over which both agencies have jurisdiction. Such investigations shall be designed to obtain adequate information upon which the Commission can determine whether probable cause exists to believe that any unlawful discriminatory practices have been or are being engaged in by the respondent.
  - 1. At the completion of such an investigation, a Commissioner may dismiss the charge if no probable cause exists to believe that unlawful practices have been or are being engaged in, or may determine that probable cause exists to believe that unlawful practices have been or are being engaged in. In the latter case, the Commission shall proceed as provided by law.
  - 2. For purposes of review, a dismissal of the charges by a Preliminary Investigating Commissioner shall be treated as a final Order of the Commission. A Preliminary Investigating Commissioner's finding of probable cause that unlawful practices have been or are being engaged in does not constitute a final Order of the Commission.
  - 3. § 2.5(C) through (F) of this Part will apply to pre-determination settlement agreements, except that, to the extent allowed by law, a complainant or respondent need not sign a pre-determination settlement agreement if their attorney signs the agreement on their behalf.
- B. Conciliation Process. If the Preliminary Investigating Commissioner finds probable cause, the Commission staff shall endeavor to eliminate all unlawful discriminatory practices by conciliation.
- C. Conciliation Agreement. If, as a result of conciliation, the Commission is able to provide for voluntary compliance with the provisions of Rhode Island anti-discrimination law, and to effect elimination of any unlawful discriminatory practices, whether against complainant or others, it may prepare a conciliation agreement which shall set forth all measures to be taken by any party, including provisions for affirmative relief and other actions and compliance reports, and which shall be signed by respondent, complainant, their attorneys, if any, and a representative of the Commission. An executed conciliation agreement is a final Order of the Commission for the purposes of judicial review. Nothing stated in a conciliation agreement shall be interpreted as an admission by any party of a

violation of any provision of Rhode Island anti-discrimination law, unless the party specifically consents to such an admission. The Commission shall serve a copy of the agreement on all parties.

- D. Compliance Reports. In disposing of a charge or of its own investigation by means of a conciliation agreement or otherwise, the Commission may require any party to submit to it such compliance reports as the Commission deems necessary to show compliance with the terms of disposition.
- E. Enforcement of Conciliation Agreement. At any time in its discretion, the Commission may investigate whether the terms of a conciliation agreement are being complied with. Upon determining that the terms of the agreement are not being complied with, the Commission may take appropriate action to assure compliance including, but not limited to, petitioning a Superior Court for its enforcement, or if less than two (2) years have passed since the filing of the charge, issuing a complaint and notice of hearing.
- F. Non-Disclosure. Nothing said or done during endeavors at conciliation shall be disclosed by any member of the Commission or its staff or be used as evidence in any proceeding unless such privilege is waived by respondent and complainant. This non-disclosure provision shall not apply in any enforcement action.

## **2.6 Subpoenas**

- A. Issuance of Subpoenas. Whenever in the discretion of the Commission it is deemed necessary to compel the attendance of witnesses or the production for examination of any books, papers, documents or tangible things relating to any matter under investigation or in question before the Commission, a Commissioner may issue a witness subpoena and/or subpoena for production of books, papers, documents or tangible things.
- B. Issuance to Parties. Upon written application of any party to a contested case, the Commission may issue subpoenas requiring the attendance and testimony of witnesses or the production of books, papers, documents or tangible things in such proceeding. The Commission may require the person requesting the subpoena to show relevance and reasonable scope of the testimony or evidence sought.
- C. Service. Unless the service of a subpoena is acknowledged by the person subpoenaed or their attorney, service shall be made by delivering a copy of the subpoena to such person and by tendering them on demand the fees for one day's attendance and mileage, if any, allowed or required by law. When the

subpoena is issued on behalf of the Commission or any state officer or agency, fees and mileage need not be tendered.

- D. **Proof of Service.** The person serving the subpoena shall make proof of service by filing the subpoena and the required return with the Commission. Service may be made by any person authorized to serve subpoenas under the Superior Court Rules of Civil Procedure. If service is made by a person other than a member or employee of the Commission, and such service has not been acknowledged by the witness, such person shall make an affidavit of service. Failure to make proof of service does not affect the validity of the service.
- E. **Compliance and Quashing.** The Commission, a Commissioner or a member of the Commission staff may accept subpoenaed documents at the time when a person complies with a subpoena. At the time when a subpoenaed witness or document must be produced, the person under subpoena may submit a written motion to quash the subpoena to the Commission or a member of the Commission staff which motion shall be transmitted to a Commissioner. Upon a motion to quash, made promptly, and in any event, at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed (and upon notice to the party for whom the subpoena is issued) a Commissioner may:
  - 1. quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue; and/or,
  - 2. condition the denial upon just and reasonable conditions.
- F. **Filing Subpoenas with Commission.** Subpoenas required to be filed with the Commission shall be deemed filed upon actual receipt by the Commission, including Commission staff members at the Commission office.
- G. **Failure to Obey Subpoena.** On the failure of any person to obey a subpoena issued at the instance of the Commission, the Commission may make application to the Superior Court for an order for such person to show cause why they shall not be held in contempt and such further relief as may be appropriate.

## **2.7 Right to Sue**

- A. **General Right to Sue.** A complainant may ask for a right to sue in state court provided that:
  - 1. not less than one hundred and twenty (120) days and not more than two (2) years have elapsed from the date of filing of a charge;



2. the Commission has been unable to secure a settlement agreement or conciliation agreement; and
  3. the Commission has not commenced hearing on a complaint.
- B. Issuance of General Right to Sue. The Commission shall issue the right to sue within thirty (30) days after the receipt of such request, which shall terminate all proceedings before the Commission and shall give to the complainant the right to commence suit in the Superior Court as provided in R.I. Gen. Laws § 28-5-28 within ninety 90 days after the issuance of the request.
- C. Probable Cause Right to Sue. Excluding housing and credit case, any party may elect within twenty (20) days after receipt of a finding of probable cause, to terminate by written notice to the Commission and all parties, all proceedings before the Commission and have the case heard in the Superior Court. If at least one (1) of multiple respondents timely elects, the Commission shall issue a right to sue notice in respect to the entire action. In the event of an election to terminate the proceedings, the Commission shall issue a right to sue notice to the complainant with a copy of such notice sent to all parties. Once a notice of right to sue is issued, the complainant shall have the right to commence suit in the Superior Court within ninety (90) days of the date of the right to sue notice .
- D. Conciliation After Issuance of a Right to Sue. Notwithstanding the issuance of a right to sue notice to the complainant under this Part, the parties may agree to have the Commission conciliate or mediate settlement of the case.

## **2.8 Reconsideration of Ruling on Probable Cause**

- A. Motion for Reconsideration by a Party. A party may move for reconsideration of a determination on probable cause for the following reasons:
1. newly discovered evidence which by due diligence could not have been discovered in time to present it to the Preliminary Investigating Commissioner prior to the determination on probable cause;
  2. excusable neglect or fraud or misconduct of an adverse party; or,
  3. upon such other grounds as the Commission deems just.
- B. Consideration and Disposition. Such motion must be in writing, must state specifically the grounds upon which it is based, and be filed with the Commission within ten (10) days from the date of the mailing of the notice of disposition of which reconsideration is requested and served upon all other parties to the original investigation. The Commission, in its discretion, shall grant or deny the motion for reconsideration, provided that any applicable time limitation has not

expired. The Commission shall notify the parties of its decision and any further action to be taken.

- C. Motion for Reconsideration by Commission. A finding on probable cause may be reconsidered by the Commission on its own initiative at any time within sixty (60) days of the finding provided that any applicable time limitation has not expired.. The Commission shall notify the parties of its decision.

## **2.9 Complaint and Notice of Hearing**

- A. Issuance of Complaint. After a determination of probable cause and a failure of conciliation efforts, or, after a determination that the circumstances warrant, in advance of any preliminary investigation or conciliation endeavors, the Commission shall serve upon all parties by certified mail, a written complaint and a notice of hearing. The hearing date shall not be less than ten (10) days after the service of the complaint.
- B. Content of Complaint. Every complaint shall be written and state the unlawful discriminatory practice allegedly engaged in and the date of its occurrence in a manner sufficiently precise to identify the parties, to describe generally the action or practices complained of, and to comply with the Rhode Island Superior Court Rules of Civil Procedure. The complaint shall be signed by a Commissioner or the Director.
- C. Contents of Notice of Hearing. The notice of hearing shall state the time and place of hearing, and the name and telephone number of the Commission attorney, if any.
- D. Time of Issuance. The Commission shall issue a complaint within the time provided by the applicable laws.
- E. Amendment of Complaint. Any complaint may be amended by the Commission provided that the respondent has had an opportunity to object and be heard on the amendment. A copy of any amended complaint shall be served on all parties. When issues not raised by the pleadings are tried by express or implied consent by the parties, they shall be treated in all respects as if they had been raised in the pleadings. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the pleadings, the hearing officer may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the actions will be promoted thereby and the objecting party fails to satisfy the hearing officer that the admission of such evidence would prejudice the objecting party in maintaining that party's action or defense upon the merits.

- F. Joinder of Parties. Any person charged with unlawful discriminatory practices arising out of the same transaction, occurrence or series of transactions or occurrences may be joined as a respondent in the same complaint. A person shall, whenever possible, be joined as a party in the complaint when:
1. in their absence complete relief cannot be accorded among those already parties; or,
  2. they claim an interest relating to the subject of the complaint and are so situated that the disposition of the complaint in their absence may:
    - a. as a practical matter impair or impede their ability to protect that interest; or,
    - b. leave any of the persons already parties subject to a substantial risk of incurring multiple, or otherwise inconsistent obligations by reason of their claimed interest. If such a person cannot be made a party, the Commission shall decide whether the action should proceed or be dismissed.
- G. Consolidation of Complaints. After providing the parties an opportunity to object, the Commission may, within its discretion, join one or more complaints into a single proceeding.

## **2.10 Answer**

- A. Time of Filing Answer. A respondent upon whom a notice of hearing and complaint has been served shall file a written answer within three (3) weeks from the date of service or ten (10) days prior to the date of hearing, whichever is earlier.
- B. Place and Manner of Filing. The answer must be filed with the Commission, a Commission attorney, and upon all other parties, by personal delivery, mail, facsimile or email.
- C. Extension of Time. Upon application, the Commission, for good cause shown, may extend the time within which the answer may be filed.
- D. Form of Answer. The answer shall be in writing and shall contain the address, email address and telephone number of the respondent, and if represented by an attorney, the name, address, bar number, email address and telephone number of said attorney. The answer shall contain a specific denial of each allegation of the complaint controverted by the respondent, or a denial of any knowledge or information sufficient to form a belief concerning such allegations, and a statement of any matter constituting a defense. General denials are not an

acceptable form of pleading and shall be stricken by the Commission. Any allegation in the complaint which is not denied, unless respondent shall state in the answer that the respondent after due investigation is without knowledge or information sufficient to form a belief on the allegation, shall be deemed admitted. An affirmative defense not first set forth by answer may not be raised at hearing on a complaint unless the hearing officer decides otherwise based on good cause shown.

- E. Amendment to Answer. The respondent may amend their answer at any time before sixty (60) days prior to the first hearing on the complaint, as a matter of right, and thereafter at the discretion of the Commission or the hearing officer, by motion. Whenever a complaint is amended, the respondent shall file an amended answer as directed by the Commission.
- F. Failure to File Answer. A respondent who has not filed an answer shall be in default and the hearing shall proceed on the evidence in support of the complaint. Such default may be set aside by the Commission or the hearing officer upon good cause shown.

## **2.11 Motions and Memoranda**

- A. Service of Motions and Memoranda. Any motion made or memorandum submitted by a party shall be filed with the Commission and served upon all other parties to the investigation or the complaint, as the case may be.
- B. Motions to Dismiss. In order to preserve their right to make a motion to dismiss the complaint at the hearing on the complaint, a party must file the motion to dismiss with the Commission and serve a copy of the motion upon all other parties not later than thirty (30) days before the date of the hearing. If a motion to dismiss is filed less than thirty (30) days prior to a hearing, the hearing officer may in their discretion waive the timeliness requirement for good cause shown and the Commission may decide the motion after evidence has been presented or refuse to consider the motion.
- C. Motions Made Before the Finding on Probable Cause. Any motions made by a party before probable cause has been determined will be decided by the Preliminary Investigating Commissioner.
- D. Motions for Summary Judgment. The Commission will not rule upon a Motion for Summary Judgment on the issue of discrimination.

## **2.12 Prehearing Procedure**

- A. Prehearing Conferences. Before the hearing on the complaint, the Commission or Commission attorney may in their discretion direct the parties or their qualified representatives to appear at a specified time and place for a conference with a Commissioner or staff member to consider:
1. the simplification of the issues;
  2. the necessity of amendments to the complaint or answer;
  3. the possibility of obtaining stipulations;
  4. the listing of witnesses;
  5. discovery issues, including discovery schedules;
  6. such other matters as may aid in the disposition of the hearing.

## **2.13 Discovery**

- A. Rights of Discovery. Following a finding of probable cause, the parties shall enjoy the same rights of discovery as are provided in the Rhode Island Superior Court Rules of Civil Procedure.
- B. Applicability of Rules. The Rhode Island Superior Court Rules of Civil Procedure governing discovery shall be applicable to discovery under this rule, except to the extent that those Rules by their nature would be inapplicable, and as otherwise specifically provided in this Chapter.
- C. Discovery Motions. A party may file with the Commission any discovery motion allowed by the Rhode Island Superior Court Rules of Civil Procedure. The Motion must be served upon all parties. Any party who objects to the Motion must file an Objection within fourteen (14) days after service of the Motion, unless otherwise specified by the Commission.
- D. Commission File. Any party may examine the case file after the finding of probable cause has been made or the case has been closed, but documents involving communications between the Commission and other civil rights agencies, internal memoranda, documents relating to conciliation or settlement, and documents revealing the identity of confidential sources will be removed from the case file by a staff member before the file is examined by any party. The Commission shall be entitled to a reasonable charge for any copying and such charge shall be prepaid.

- E. Witnesses. Either party or the Commission may request a list of the witnesses and a copy of the documents which the other party intends to present at hearing. Such lists or documents shall be provided by the date specified by the Commission. Either party may move for a Protective Order.
- F. Completion of Discovery. All discovery shall be completed at least thirty (30) days prior to the commencement of the hearing before the Commission, or any rescheduling thereof.

## **2.14 Hearing**

- A. Appearance of Parties. The complainant and respondent shall be parties to the proceeding and may examine and cross-examine witnesses and submit other evidence. Any person who has or claims an interest in the subject of the hearing may, in the discretion of the hearing officer, be permitted to appear for presentation of oral or written arguments.
- B. Conduct of Hearings. Consistent with the provisions of this Part, hearings shall be conducted by one or more hearing officers. If more than one hearing officer conducts a hearing, one of them shall be designated by the Commission as the presiding member.
- C. Time of Hearings. A hearing shall be conducted at the time and place set forth in the notice of hearing, except that the time of hearing may be extended by the Commission, on application of any party or the Commission attorney, to such later date as the Commission may determine for good cause shown.
- D. Procedure at Hearing. Unless specifically provided otherwise in this Part, the following procedures shall apply to all hearings before the Commission.
  - 1. The hearing officer shall have full authority to control the procedures of the hearing, to admit or exclude testimony or other evidence, to rule upon all objections and take such other actions as are necessary and proper for the conduct of such hearing including, but not limited to, ordering the appearance of any person and the production of any books, papers, documents or tangible things at the hearing; and ruling upon any motion to quash or modify a subpoena; provided, however, that the hearing officer shall make no finding at the hearing that respondent has engaged in any unlawful discriminatory practice or that the complaint should be dismissed.
  - 2. Where hearings are conducted by three (3) or more hearing officers, all rulings and determinations shall be made by majority rule.

3. Written stipulations may be introduced in evidence, if signed by the person(s) sought to be bound thereby, or by their attorney(s). Oral stipulations may be made on the record at hearings.
4. The hearing officer may continue a hearing from day to day or adjourn it to a later date or to such different place, as is permitted by law, by announcing such action at the hearing, or by appropriate notice to all parties.
5. The hearing officer shall permit the parties, the Commission attorney or members of the Commission staff who are presenting the case, and other persons permitted to appear pursuant to this Part to argue orally and/or to file briefs within such time limits as the hearing officer may determine.
6. The testimony taken at the hearing shall be under oath. The entire proceedings shall be transcribed and the transcript shall be filed with the Commission. Thereafter, in its discretion, the Commission, upon notice to the complainant and to the respondent, may take further testimony or hear argument.
7. The hearing officer may exclude from the hearing room, or from further participation in the proceeding, any person who engages in disruptive conduct during the hearing.
8. Any party to a hearing may be represented by counsel, as set forth in § 2.3(A) of this Part. Any party may represent themselves to the extent authorized by law and § 2.3(A) of this Part. The Commission counsel may represent a party when they are directed to do so by the Commission.
9. All hearings shall be public, unless for good cause the Commission shall decide otherwise.
10. The Commission shall not be precluded from taking evidence, considering claims or issuing findings on matters which could have been presented to any other state administrative agency, but which were not actually presented and decided in a contested case as defined under the Administrative Procedures Act. To the extent the Commission is bound by findings of fact and conclusions of law of another state administrative agency, the Commission shall be entitled to grant any relief authorized under the law in accordance with those findings to the extent that this relief was not available to, or within the authority of, the other agency to provide.

- E. Rules of Evidence. While the method of presenting evidence shall be relaxed, only competent, relevant and material evidence shall be considered by the Commission.
1. Subject to the provisions of law and to other provisions of this Chapter, all relevant evidence is admissible which, in the opinion of the hearing officer, is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness. In passing upon the admissibility of evidence, the hearing officer shall give consideration to, but shall not be bound to follow the rules of evidence prevailing in the courts.
  2. The hearing officer may, in their discretion, either with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered. When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling.
- F. Reopening of Hearing. At any time after a hearing has been closed but prior to the filing of the Decision and Order, the Commission may, on its own initiative or upon written motion by any party, a copy of which has been provided to all parties, reopen the proceeding to receive further evidence and/or to hear argument.
- G. Proposed Findings of Fact. Any party may, at the conclusion of a hearing or within such later time as may be fixed, submit to the Commission proposed findings of fact, copies thereof to be served upon each party to the proceeding. These proposed findings of fact must be stated in separately numbered paragraphs which state facts and not arguments.
- H. Memoranda. The hearing officer may allow parties to present memoranda and/or written arguments after the conclusion of the hearing.

## **2.15 Record of the Hearing**

- A. Administrative Record. The administrative record of a hearing shall consist of the notice of hearing, the complaint, as it may have been amended, the answer, as the same may have been amended, the transcript of the hearing, all documents accepted into evidence, proffers of evidence, orders, motions and objections thereto, memoranda, stipulations, the findings of fact, conclusions of law and final Orders of the Commission.



- B. Transcripts of a Hearing. Transcripts of hearings shall be available at the Commission's office for examination and copying. If any party files proceedings for judicial review, the Commission shall, upon request by any party, provide a copy of the transcript of the hearing at such reasonable prepaid charge as the Commission shall establish.

## **2.16 Decisions and Orders**

- A. Content. Any Decision and Order of the Commission issued after a hearing shall contain findings of fact, conclusions of law, and a ruling on each proposed finding of fact submitted by a party.
- B. Issuance of Decisions and Orders. Unless specifically provided otherwise in this Part, the following procedures shall apply to all Decisions and Orders issued by the Commission:
1. At least three (3) Commissioners must participate in the decision on a case. A majority of the Commissioners must agree on the Decision and Order.
  2. If the Commission determines that the respondent has engaged in, or is engaging in, any unlawful discriminatory practice, the Commission shall serve on such respondent a Decision and Order containing findings of fact and conclusions of law, and requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such further affirmative action as will effectuate the purposes of the Rhode Island anti-discrimination laws, including, but not limited to:
    - a. hiring, reinstatement, or upgrading of employees with or without back pay;
    - b. admission or restoration to union membership or to training practices with utilization of objective criteria for admission;
    - c. admission to place of public accommodation;
    - d. sale or lease of housing accommodations and lending of money upon equal terms and conditions, and,
    - e. a requirement for reports of the manner of compliance, payment of complainant's attorney's fees, expert fees, other litigation expenses and compensatory damages.
  3. With respect to charges filed under the Fair Housing Practices Act, upon a determination that a respondent has engaged in, or is engaging in, any

unlawful discriminatory practice, the Commission may also order the respondent to pay a civil penalty as provided by law and may also order the respondent to pay the complainant damages sustained by the unlawful discriminatory practice.

4. In case a respondent is operating by virtue of any license or permit issued by the state or agency thereof, if the Commission determines after hearing that the respondent has engaged in or is engaging in any unlawful discriminatory practice, the Commission shall send a copy of its Decision and Order to the licensing or contracting authority.
  5. At any time in its discretion, the Commission may investigate whether the terms of the Decision and Order are being complied with. Upon a determination that the terms of the Decision and Order are not being complied with, the Commission may take appropriate action to assure compliance including, but not limited to, petitioning the Superior Court of Rhode Island for its enforcement.
  6. The Commission with the consent of the respondent may enter a consent Order at any time after service of a complaint. Such consent Orders shall include an express provision that respondent intends to be legally bound thereby. Consent orders shall have the same force and effect as a Decision and Order of the Commission entered after hearing. Such consent Orders shall waive public hearing and may or may not make findings of fact or conclusions of law.
- C. Dismissal. If the Commission finds that the respondent has not engaged in any unlawful discriminatory practices against the complainant or others, it shall mail the Decision and Order dismissing the complaint to the complainant, respondent and the Attorney General.
- D. Service of Orders. Copies of Decisions and Orders shall be served on all parties, and, where appropriate, the Attorney General and the state licensing or contracting authority.
- E. Filing of Orders. All Decisions and Orders issued by the Commission after a hearing shall be filed in the office of the Commission and shall be open to public inspection during regular office hours of the Commission.

## **2.17 Reopening of Proceedings**

Authorization of Commission. After issuing any Decision and Order pursuant to § 2.16 of this Part, the Commission, on its own motion, whenever justice so requires, and after reasonable notice and opportunity to be heard have been

given to all parties, may reopen any proceeding and take such action as it may deem necessary, including modifying or setting aside, in whole or part, any finding or Order previously made by it.

## **2.18 Equal Access to Justice for Small Businesses and Individuals**

- A. Qualifications for a Petition for Reasonable Litigation Expenses. An award of reasonable litigation expenses to a respondent may be made when:
  - 1. the Commission initiated the charge filed against the respondent; and,
  - 2. the respondent prevails after a final hearing on the merits; and,
  - 3. the respondent is an individual whose net worth is less than the limit established by the Equal Access to Justice Act, at the time of the commencement of the first hearing or is any individual, partnership, corporation, association or private organization doing business and located in the state, which is independently owned and operated, not dominant in its field, and which employs one hundred (100) or fewer persons at the time of the commencement of the first hearing; and,
  - 4. the award is required by law.
- B. Form and Procedure. Unless specifically provided otherwise in this Part, the following procedures shall apply to all Petitions for Reasonable Litigation Expenses.
  - 1. If a respondent qualifies to apply for an award of reasonable litigation expenses as specified above in § 2.18(A) of this Part, they may petition for an award of such expenses within thirty (30) days after the mailing date of the Commission Decision and Order which finds in favor of the respondent after a final hearing on the merits. The Petition must include a completed Commission form.
  - 2. All Petitions filed pursuant to § 2.18(A) of this Part shall contain:
    - a. a statement that the respondent requesting the reasonable litigation expenses qualifies as a “party” pursuant to the Equal Access to Justice Act;
    - b. a summary of the legal and factual basis for filing the Petition;
    - c. a detailed breakdown of the reasonable litigation expenses incurred by the respondent in the adjudicatory proceeding, including copies of invoices, bills, affidavits, and any further documents requested

by the Commission subsequent to the initial filing of the Petition;  
and

- d. a notarized statement swearing to the accuracy and truthfulness of the statements and information contained in the Petition, and/or filed in support thereof.
- C. Objections. The complainant or Civil Prosecutor may file an objection to the Petition for an award setting forth their reasons therefore. Such objection(s) must be filed with the hearing officer within thirty (30) days after receipt of the respondent's Petition, but the period for filing such objection may be extended for good cause shown.
- D. Hearing and Decision on Respondent's Petition For Reasonable Litigation Expenses. When the Commission receives a Petition for reasonable litigation expenses, which appears to meet the qualifications set forth in § 2.18(A) of this Part, it will schedule a hearing on the Petition. Three (3) Commissioners will review the transcript of the hearing along with exhibits, the Petition, objections and memoranda and issue a Decision and Order on the Petition. The respondent must prove that an award of reasonable litigation expenses is required by law.
- E. Disallowance of Awards. Unless otherwise specifically provided in these Regulations, the following standards shall apply to all awards:
1. No award of reasonable litigation expenses may be made if there is a finding that the Commission had substantial justification in the actions leading to the proceeding and the proceeding itself, or that the respondent failed to prove entitlement to reasonable litigation expenses.
  2. The Commission may, in its discretion, deny fees or expenses if special circumstances make an award unjust.
  3. A Decision and Order disallowing a Petition for Reasonable Litigation Expenses shall include written findings and conclusions with respect to the denial of the award.

## **2.19 Petition for Action on Regulations**

- A. Procedure. A Petition to promulgate, amend or repeal a Regulation must be in writing, submitted to a Commission attorney, and include the following information:
1. the name and address of the petitioner;

2. a statement requesting the promulgation, amendment or repeal of a Regulation;
  3. a detailed statement of all facts relied upon by the petitioner;
  4. a copy of all documents relied upon by the petitioner;
  5. in the case of a request for the repeal of an existing Regulation, the petitioner must identify the Regulation by title and RICR citation; and,
  6. In the case of a Petition for an amendment to an existing Regulation, the petitioner must identify the Regulation by title and RICR citation and identify with specificity all proposed additions, deletions or other amendments, using underline formatting for proposed insertions and strikethrough formatting for proposed deletions.
- B. Consideration and Disposition. The Commission shall promptly consider and dispose of a Petition for the promulgation of a Regulation as provided by the Administrative Procedures Act.
1. The Commission may, in its discretion, and within the period prescribed by state law:
    - a. hold a hearing; or,
    - b. reschedule the hearing for further consideration and discussion of the Petition; or,
    - c. request further information or documents necessary for the full consideration and disposition of the Petition.
- C. Conduct of Public Hearings. The following procedures shall apply to all Petitions for Actions on Regulations:
1. Public hearings may be held at the election of the Commission or as required by state law at a time and place designated by the Commission.
  2. Notice of public hearings shall be issued in accordance with the provisions of state law.
  3. The public hearing shall be officially transcribed or recorded, and the transcription or recording shall be made part of the record in accordance with state law.
  4. Members of the public must sign in prior to giving oral testimony during the hearing.

5. Written testimony may be submitted to the Commission prior to the hearing, or to the hearing officer during the hearing.
6. Members of the public attending the public hearing shall not cause disruptions, including but not limited to: screaming, loud noises, and disorderly gesticulations, which interrupt or distract from the testimony of other members of the public or from the ability of the hearing officer to conduct the public hearing. The hearing officer may exclude from further participation in the public hearing any person who engages in disruptive conduct during the hearing.

## **2.20 Petition for Declaratory Order**

- A. Petition for Declaratory Order. A petition for a Declaratory Order must be in writing, submitted to a Commission attorney and include the following information:
  1. The name and address of the petitioner;
  2. A statement identifying the statute, Regulation, guidance document or Order at issue;
  3. A detailed statement of all facts relied upon by the petitioner;
  4. A copy of any and all documents relied upon by the petitioner;
  5. A statement requesting a Declaratory Order, and further indicating whether petitioner seeks:
    - a. an interpretation or application of a statute administered by the Commission; and/or,
    - b. clarification as to the manner in which a Regulation, guidance document or Order issued by the Commission applies to the petitioner.
- B. Consideration and Disposition. The Commission shall consider the Petition as provided in the Administrative Procedures Act.
  1. The Commission may, at its discretion:
    - a. issue or decline to issue the Order; or,
    - b. schedule the matter for further consideration.

2. A petitioner may appeal the Commission's final disposition of the Petition for a Declaratory Order as provided by the Rhode Island Administrative Procedures Act.

**515-RICR-10-00-2**

**TITLE 515 - COMMISSION FOR HUMAN RIGHTS**

**CHAPTER 10 - OPERATION**

**SUBCHAPTER 00 - N/A**

**PART 2 - PROCEDURE**

Type of Filing: Amendment

**Agency Signature**

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Agency Head Signature

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Agency Signing Date

**Department of State**

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Regulation Effective Date

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Department of State Initials

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Department of State Date