

STATE OF RHODE ISLAND
EQUAL OPPORTUNITY OFFICE
RULES AND REGULATIONS CONCERNING
HEARINGS OF DISCRIMINATION COMPLAINTS

RULE 1: ORGANIZATION AND METHOD OF OPERATIONS

- 1.01 Organization – The RI General Law 28-5.1, regarding Equal Opportunity and Affirmative Action Policy, establishes the Rhode Island State Equal Opportunity Office and sets forth its procedures and authority.
- 1.02 Function – It is the function of the Rhode Island State Equal Opportunity Office to enforce the Law, which prohibits discrimination because of race, color, religion, sex, age, national origin, handicap or sexual orientation, in the field of employment in Rhode Island State Government.
- 1.03 Method of Operation – The Office accepts, from both State employees and applicants for State employment, complaints of discrimination that are based on race, color, sex, religion, age, national origin, handicap, sexual orientation or sexual harassment. The Office will investigate the allegations and shall make every effort by informal conference, conciliation and persuasion to achieve compliance. When these methods do not resolve a charge or complaint, the Office will conduct a formal hearing.

RULE 2: DEFINITIONS – WHERE USED IN THESE RULES AND REGULATIONS

- 2.01 The term “Law” shall mean RI General Law 28-5.1 on Equal Opportunity and Affirmative Action
- 2.02 The term “Executive Order” shall mean the Governor’s Executive Order on Sexual Harassment.
- 2.03 The term “Charge or Complaint” shall mean a written allegation of a Civil Rights Violation, filed with the RI State Equal Opportunity Office, by an individual stating that he/she has been discriminated against by reason of race, color, religion, sex, age, national origin, handicap, sexual orientation or sexual harassment.
- 2.04 The term “Civil Rights Violation” shall refer to any discriminatory acts or practices.
- 2.05 The term “Administrator” shall mean the Administrator of the Rhode Island State Equal Opportunity Office.
- 2.06 The term “Office” shall mean the Rhode Island State Equal Opportunity Office.
- 2.07 The term “Department” shall mean an agency in Rhode Island State Government.
- 2.08 The term “Complaint” shall mean an individual filing a complaint of alleged discrimination in accordance with the Law or Executive Order.
- 2.09 The term “Respondent” shall mean a person or agency against whom an alleged charge or complaint is filed in accordance with the Law or Executive Order.

- 2.10 The term “Hearing Officer” shall mean the person authorized by the State Equal Opportunity Office to conduct formal hearings regarding alleged Civil Rights Violations, filed with the RI State Equal Opportunity Office.
- 2.11 The term “Discrimination” shall mean:
- (a) prejudice or prejudicial outlook, action or treatment toward individuals who are not equally considered for appointments, promotions, transfers, training and work assignments based on race, color, religion, sex, age, national origin, handicap, sexual orientation or sexual harassment.
 - (b) a violation of any state or federal nondiscrimination statute, regulation, or executive order.

RULE 3: PRACTICE BEFORE THE STATE EQUAL OPPORTUNITY OFFICE

- 3.01 Any person may appear before the Office in his/her own behalf. Except as may otherwise be provided by law, no person may appear in a representative capacity before the Office other than (a) attorneys-at-law duly qualified and entitled to practice before the Supreme Court of the State of Rhode Island, (b) attorneys-at-law duly qualified and entitled to practice before the highest court of any other state, to appear in a representative capacity before administrative agencies of such other state, (c) such other persons as by law are expressly authorized to appear in representative capacities, and (d) a bona fide officer of the agency (respondent) if the Office deems it appropriate and is not otherwise prohibited by State law.
- 3.02 All persons appearing in proceedings before the Office 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 Office may decline to permit such person to appear in a representative capacity in any proceeding before the Office.

RULE 4: CHARGE

- 4.01 Who May File – State employees and applicants for state employment may file a charge at any time within ten (10) working days of the knowledge of the alleged incident of discrimination. If the alleged violation is of a continuing nature, the date of occurrence may be any date subsequent to the commencement of the violation up to and including the date on which it shall be ceased.
- 4.02 Form – A charge shall be in writing and signed by the complainant using the form supplied by the RI State Equal Opportunity Office.
- 4.03 Contents – A charge shall be in such detail as to substantially apprise the Office of the time, place, and facts with respect to the alleged violation. It should contain the following:
- (a) The full name, address, and telephone number of the person making the charge.
 - (b) The name and address of the State Agency, persons against whom the charge is made.
 - (c) A statement of facts alleged to constitute the violation, including the date, time, and place thereof.
 - (d) A statement describing any other action instituted by/on behalf of the complainant in any other form.

- 4.04 Acceptance of Charge
- (a) The office shall accept for hearing any charge, which it receives from an individual in compliance with the foregoing provisions of this article.
 - (b) In the event the Office receives a written statement from an individual which does not comply substantially with Sections 4.02, 4.03 hereof, the Office may accept and docket the statement as an unperfected charge. The Office shall notify the complainant in writing of the elements, which must be supplied to perfect the charge. If the individual fails or refuses to perfect the charge as specified, the charge may be dismissed.
- 4.05 Amendment – A charge or any part thereof, may be amended by the complainant to cure technical defects or omissions, or to clarify or amplify allegations made therein, or to set forth additional facts of allegations related to the subject matter of the original charge, and such amendments shall relate back to the original filing date.
- 4.06 Withdrawal of Charge – A charge or any part thereof, may be withdrawn by the complainant at any time. A complainant's request to withdraw a charge shall be in writing, signed, and witnessed. The Office shall approve the request if it is knowingly and voluntarily made, and shall promptly so notify all parties in writing.
- 4.07 Deferral of Charge – If a charge has been filed, either simultaneously or at a later date, with the RI Human Rights Commission, or the Equal Employment Opportunity Commission, the State Equal Opportunity Office will defer to either Commission for investigation and answer to the charge.

RULE 5: PROCEDURE UPON CHARGE

- 5.01 Docketing and Service of Charge – Each charge, once filed, shall be docketed and assigned a case number by the Office. The respondent shall be notified within five (5) days following the date of filing. The complainant will be notified that the charge is being processed.
- 5.02 Maintenance of Records – Notwithstanding any other provision of these rules and regulations, once a charge has been served on a respondent, the respondent shall preserve all records and other evidence with may be relevant to the case until the matter has been finally resolved.
- 5.03 Investigation – After a charge has been filed, the Office staff shall institute an investigation to ascertain the facts relating to the civil rights violation as alleged in the charge and any amendments thereto. During the investigation of a charge, the Administrator or office employee supervising the investigation may request the attendance of witnesses or the production for examination copies of any books, records or documents.
- 5.04 Determination After Investigation
- (a) Report – After investigation of a charge, a report inclusive of all facts, findings, and recommendations, will be prepared and submitted to the Administrator for determination of probable cause.
 - (b) Dismissal – If there is no conclusive evidence of probable cause, a written notice dismissing the case will be sent to all interested parties.

- (c) Substantial Evidence – If probable cause of a civil rights violation is evident, the Office will serve notice of such determination advising both parties that conciliation efforts will take place.
- (d) Conciliation – The Office will proceed to conciliate the settlement of the charge and prevent the repetition of future civil rights violations. If an agreement is not reached, a formal hearing will be scheduled.

RULE 6: CONDUCT OF HEARING

All hearings shall be held pursuant to Chapter 35 of Title 42 of the Rhode Island General Laws.

RULE 7: FORMAL HEARINGS

The respondent to a complaint may file a written answer to the complaint, appear at the hearing, give testimony and be represented by counsel and may obtain from the Office, a subpoena for any person or for the production of any evidence pertinent to the proceedings. The complainant must be present at the hearing and may be represented by counsel.

- 7.01 The Hearing Officer from the RI State Equal Opportunity Office shall hear the case and make a decision based on the evidence presented thereto. The Hearing Officer shall not be bound by the formal rules of evidence governing courts of law, but shall permit reasonable direct and cross examination and the submission of briefs. Testimony at the hearing shall be taken under oath and recorded by tape or otherwise.
- 7.02 Sequence of the Hearing
 - (a) Introduction of the Hearing Officer
 - (b) Administration of oath to the parties and witnesses
 - (c) Complainant's Presentation
 - (d) Respondents Presentation
 - (e) Complainant's closing statements
 - (f) Respondent's closing statements
- 7.03 Appearance – The complainant must be present at the hearing and may present testimony or evidence and may either in person or by counsel, examine or cross-examine witnesses. If, after receiving proper notice, the complainant does not appear at the hearing, the complaint may be dismissed.
- 7.04 Continuation and Adjournment – The Hearing Officer or Administrator may continue or adjourn the hearing to a later date.
- 7.05 Improper Conduct – The Hearing Office may exclude from the hearing room or from further participation in the proceedings any person that engages in improper conduct. Exceptions to this are only a party or his/her attorney or a witness engaged in testifying.
- 7.06 Sequestering Witnesses – The Hearing Officer may sequester witnesses from the hearing until the time of their testimony.

7.07

Findings – If the Hearing Officer finds from the evidence that the respondent has engaged in a discriminatory practice, he/she shall make written findings of fact, conclusion of law and the decision. Within five (5) days after the decision of the Hearing Officer, the Office shall inform the parties of record of the decision. As part of its order, the Office may require the respondent to pay actual damages to the complainant and to take such affirmative action as the Hearing Officer considers necessary, including a requirement for reports of the manner of compliance.

If the Hearing Officer finds from the evidence that the respondent has not engaged in a discriminatory practice, the Office shall make written findings of fact and serve the complainant and respondent with a copy of the finding of fact and with an order dismissing the complaint.

