

## 94-348 ADOPTED CHANGES TO RULES

### **Sec. 1. Me. Hum. Rights Comm'n Reg., Chapter 2, is revised as follows:**

DESCRIPTION: The following rule describes the process by which complaints of discrimination will be filed, processed, and considered by the Maine Human Rights Commission, with the exception of complaints alleging unlawful education discrimination, which are governed by Chapter 4-A.

#### 2.01 DEFINITIONS

All terms used in these regulations, unless the context otherwise indicates, shall have the same definition as in the Maine Human Rights Act, 5 M.R.S.A. §§ 4551 et seq. (the Act).

#### 2.02 COMPLAINTS

##### A. Who may file.

- (1) Any person who believes that he or she has been subjected to unlawful discrimination may file a complaint with the Maine Human Rights Commission (the Commission).
- (2) Any employee of the Commission may file a complaint with the Commission alleging an act or practice of unlawful discrimination.

##### B. Contents

A complaint should briefly set forth the facts and circumstances surrounding the alleged discrimination.

##### C. When to file.

A complaint of discrimination must be filed with the Commission not more than ~~six (6) months~~ 300 days after the act of alleged discrimination occurred.

##### D. Where to file.

Complaints must be filed at the office of the Maine Human Rights Commission, 51 State House Station, Augusta, Maine 04333-0051; complaints filed with the Equal Employment Opportunity Commission (EEOC) and the ~~U.S. Dept. United States Department~~ of Housing and Urban Development (HUD) pursuant to work sharing agreements ~~between the Maine Human Rights Commission and EEOC and HUD shall be deemed filed with the Maine Human Rights Commission;~~ on the date of filing with EEOC or HUD.

E. How to file.

Complaints may be filed in person or by mail by filling out a form provided by the Commission or by EEOC or HUD pursuant to work sharing agreements between the ~~Maine Human Rights Commission~~ and EEOC or HUD. Complaints must be sworn to under oath before a Notary Public or other person authorized by law to administer oaths, or before a representative of the EEOC or HUD pursuant to work sharing agreements signed between the ~~Maine Human Rights Commission~~ and the EEOC and HUD.

Upon request, Commission staff will assist in the preparation of the necessary complaint forms. Aggrieved persons may provide information by mail, telephone, or email. Commission staff may request that intake forms be prepared and submitted. If the information received alleges a violation of the Act, Commission staff will reduce the information to writing on the appropriate complaint form and send it to the aggrieved person to be notarized and filed with the Commission.

F. Amendment of complaints.

Complaints may be amended to cure technical defects or omissions, including failure to swear to the complaint under oath before a Notary Public, or to clarify and amplify allegations made therein. Such amendments and amendments alleging additional acts ~~which~~that constitute unlawful practices related to or growing out of the subject matter of the original complaint will relate back to the date the complaint was first received.

G. Withdrawal of complaints.

- (1) A complaint may be withdrawn at any time, by written request, prior to the issuance of a statement of finding by the Commission, by the person who originally filed it provided, however, that where the investigation and processing of a complaint has been completed prior to the receipt of a written request for withdrawal, withdrawal is subject to Commission approval. Upon notification or approval of withdrawal, the Commission<sup>1</sup> shall cease its investigation.
- (2) Withdrawal of an individual complaint will not, however, preclude the investigation and processing of any complaint filed by any employee or member of the Commission, which alleges the same acts of discrimination.

H. Administrative dismissal.

The Commission's Executive Director may, in ~~his/her~~his discretion, administratively dismiss complaints of discrimination for such reasons as:;

- (1) lack of jurisdiction;
- (2) failure to substantiate the complaint of discrimination;
- (3) failure to file a complaint of discrimination within 300 days ~~six (6) months~~ of the date of alleged discrimination;
- (4) failure by complainant to proceed or cooperate with the investigation; or,
- (5) failure by complainant to accept reasonable offers to resolve the allegations in the complaint.

Immediately following administrative dismissal, the ~~Commission~~ agency shall notify the complainant and the respondent of its action, and shall inform the complainant of ~~his/her~~ her/his right to proceed pursuant to 5 M.R.S.A. ~~Chapter 337, Subchapter VI, § 4621.~~

I. Notice of Right to Sue.

A right to sue letter may be requested by a complainant, in writing, 180 days or more after the filing of a complaint with the Commission. If the Commission has not filed a civil action in the case or has not entered into a conciliation agreement in the case, the Commission's ~~designated representative~~ Executive Director or her/his designee shall issue a right-to-sue letter, provided, however, that where the investigation and processing of the complaint have been completed and an Investigator's Report issued prior to the receipt of a written request for a right-to-sue letter, the issuance of the right-to-sue letter is subject to the Commission's approval. Upon issuance of the right-to-sue letter, the Commission shall end its investigation.

J. CONFLICT OF INTEREST.

- (1) As used in the subsection, "conflict of interest" means that:
  - a) a Commissioner has an adverse or pecuniary interest as defined by 5 M.R.S.A. §18; or
  - b) a Commissioner is a complainant or respondent in a case under investigation; or
  - c) a Commissioner is an employee or member of an entity ~~which~~ that is a party in a case under investigation by the Commission, or an employee or member of an entity operating as an advocate for a party appearing before the Commission.

- (2) The Commission will not provide any information to a Commissioner with a conflict of interest as defined in ~~(1)(b)~~ above, which it would not provide to any other ~~r~~Respondent or ~~c~~Complainant.
- (3) All communications with the Commission made by the Commissioner with the conflict of interest relative to the merits of the case prior to the conclusion of the investigation as defined in 5 M.R.S.A. § 4612(1)(B), will be directed to the investigator assigned to the case, not to the Executive Director, the Commission Counsel, or any other Commissioner. All such communications will be noted in the case file.
- (4) Any Commissioner who has a conflict of interest in a case before the Commission will excuse himself or herself from the Commission decision affecting that case pursuant to Rules 2.07 and 2.08.

### 2.03 NOTIFICATION

Within 10 days after ~~whenever~~ a complaint has been pre-screened, notarized, filed, and assigned a case number, the party against whom the complaint has been filed, referred to as respondent, will be notified and provided with a copy of the complaint. The complainant will be provided with a copy of the notification. The notice will advise the parties of time limits applicable to complaint processing under this chapter and of the procedural rights and obligations of the parties under the Act and this chapter; the complainant's right to commence a civil action in the Superior Court; and that it is unlawful to discriminate against any person because the person made a complaint or testified, assisted, or participated in an investigation, proceeding, or hearing under the Act.

### 2.04 EARLY RESOLUTION SETTLEMENT

- A. Subsequent to notification and separate from the investigation of the allegations in the complaint, ~~a designated Commissioner or an employee of the Commission~~the Commission's Compliance Officer or her/his designee will provide an opportunity to the parties for discussion of settlement.
- B. Evidence of conduct or statements made in settlement negotiations, settlement offers, and any final agreement are confidential and may not be disclosed ~~cannot be made public~~ without the written consent of the parties, nor used as evidence in any subsequent proceeding, except in an action for breach of agreement. Notwithstanding this provision, the Commission and its employees have discretion to disclose such information to a party as is reasonably necessary to facilitate settlement.
- C. Prior to a determination by the Commission of whether there are reasonable grounds to believe that unlawful discrimination has occurred, ~~if~~ the matter is resolved to the mutual satisfaction of the ~~complainant and respondent~~parties and

to the satisfaction of the ~~designated Commissioner or Commission employee~~ Commission's Executive Director or her/his designee, the Executive Director or her/his designee shall have the authority to sign any settlement agreement on behalf of the Commission, together with the parties. When the Commission agrees in any negotiated settlement not to process that complaint further, the Commission's agreement shall be in consideration for the promises made by the other parties to the agreement. The complaint will be dismissed by the Commission's Executive Director or her/his designee upon ascertainment by the designated Commissioner or Commission employee that the terms of the signed agreement between the complainant and respondent settlement have been met.

D. In the alternative, the Commission's Compliance Officer or her/his designee may facilitate a settlement between the parties resulting in the withdrawal of the complaint pursuant to 2.02(G).

## 2.05 INVESTIGATION

- A. After a complaint has been pre-screened, notarized, filed, and assigned a case number, ~~a duly authorized representative of the Commission~~ a Commission investigator will conduct such preliminary and impartial investigation as is necessary. An investigation may involve fact-finding meetings and interviews with the complainant, the respondent, and any other persons whose statement may provide a source of evidence. The ~~Commission's representative~~ investigator may record, by mechanical, electronic or other means, all statements by all persons involved. If the ~~Commission's representative~~ investigator calls for a fact-finding meeting, the parties shall be given reasonable notice in advance of the meeting.
- B. The Commission's ~~representative~~ investigator shall have access at all reasonable times to premises, records, documents, individuals and other evidence or possible sources of evidence and may examine, record and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation. The Commission's investigators are hereby delegated the authority to administer oaths. The Commission's representative investigator shall maintain a written record of all interviews. The parties shall have the right to review the representative's interview record, but the timing of such review shall be subject to the investigator's discretion, unless the representative determines that disclosure will prejudice the pending investigation.
- C. Documents, records, files or other possible sources of evidence shall be produced within ~~fourteen (14) days of the time specified by the~~ a Commission representative's written request for their production, unless the person possessing them shows cause to the Commission's representative that production within the fourteen (14) day period time specified would impose an unjustifiable burden. Excessive delay or failure to produce the requested materials may result in the issuance of a subpoena by the Commission for their production.

D. Subpoena power.

- (1) Form. Subpoenas shall be issued in the name of the Maine Human Rights Commission, shall designate the Commission as recipient of the material or testimony specified, and shall designate a specific time, and place for the production of the documents and/or testimony.
- (2) When available. A subpoena may be used to compel testimony or the production of documents whenever, ~~in the investigation of an individual, class or commission complaint,~~ there is reasonable cause to believe that those materials or the testimony of the persons are material to the complaint.
- (3) Procedure. When the Commission's Executive Director or Commission Counsel determines pursuant to ~~§4612.1~~ that there is reasonable cause to believe that the testimony or documents withheld are material to investigation of the complaint, the Executive Director or Commission Counsel ~~shall~~may issue a subpoena.

The subpoena shall include: the name and address of the respondent subject of the subpoena; if the subject of the subpoena is not an individual, the name of the senior officer or person in charge; a brief description of the documents requested and/or the name and title of the person(s) whose testimony is requested; and the date, time and place such production and/or testimony is requested.

If a subpoena is issued, notice must be given to the complainant and the respondent.

- (4) Service. Subpoenas may be served by any person who is not a party to the proceeding and who is not less than eighteen (18) years of age. Service shall be made by delivering a copy of the subpoena to the person named therein and tendering to that person the fees and mileage paid to witnesses in the Superior Court of this State.
- (5) Return. The person serving the subpoena shall make proof of service by filing the original of such subpoena and an affidavit of acknowledgment of service with the Commission. However, failure to make such proof of service shall not affect the validity of such subpoena and service.
- (6) Enforcement. If any person refuses to obey a subpoena, the Commission may apply to any justice of the Superior Court for an order compelling compliance with the subpoena.

- (7) Opposition. Any person served with a subpoena may oppose it by applying for judicial review in Superior Court.
- E. Prior to the conclusion of an investigation, all information possessed by the Commission relating to the investigation is confidential and may not be disclosed, except that the Commission and its employees have discretion to disclose such information as is reasonably necessary to further the investigation. The complaint and evidence collected during the investigation, other than data identifying persons who are not parties, shall become a matter of public record upon issuance of a letter of dismissal or upon listing of the complaint on a published Commission meeting agenda. The complaint and evidence collected may be used as evidence in any subsequent proceeding, civil or criminal.
- F. Upon completion of the investigation, the Commission's ~~representative~~ investigator will make and transmit a report of the investigation together with recommendations concerning the disposition of the complaint (hereafter referred to as Investigator's Report), to the complainant and the respondent. The Investigator's Report shall be approved for legal sufficiency by the Commission Counsel or her/his designee before it is issued. All parties to a complaint shall be given a reasonable opportunity to review and respond to all evidence considered by the Commission before the Investigator's Report is issued, but the timing of any such review shall be subject to the investigator's discretion. With respect to complaints alleging unlawful housing discrimination, unless it is impracticable to do so, the Commission will issue an Investigator's Report within 100 days of the filing of the complaint. If the Commission is unable to do so, it will notify the complainant and respondent by mail of the reasons for the delay.
- G. Upon receipt of the Investigator's Report described in 2.05(F), a party person shall have an opportunity to make a written submission to the Commission setting forth specific items of disagreement with the report and/or recommendations. The written submission shall be filed with the Commission's office within seventeen (17) days of issuance of the Investigator's Report. Only specific items of disagreement ~~which~~ that address the following will be considered:
- (1) relevant factual errors;
  - (2) relevant omissions of fact; and/or
  - (3) relevant issues and questions concerning interpretation of the law.
- H. At the expiration of the seventeen (17) day period, ~~at~~ the Commission's representative will transmit the Investigator's Report and the written matter submitted by the complainant and/or respondent to the Commission.

- I. The Commission must conclude its investigation within 2 years after a notarized complaint is filed with the Commission. An investigation is concluded for purposes of this requirement upon issuance of a letter of dismissal or upon listing of the complaint on a published commission meeting agenda, whichever first occurs.
- J. With respect to complaints alleging unlawful housing discrimination, the Commission must make final administrative disposition of the complaint within one year of the date of receipt of the complaint, unless it is impracticable to do so. If the Commission is unable to do so, it shall notify the parties, in writing, of the reasons for not doing so.

## 2.06 COMMISSION MEETING

The Commission may allow the parties to make an oral presentation on information related to the complaint of discrimination at a monthly Commission meeting. Information presented must comply with 2.05(G). The Commission may impose time limits.

## 2.07 COMMISSION DECISION UNDER NON-EMERGENCY PROCEDURE

After considering the Investigator's Report, complainant's and respondent's submissions, if any, and other related information, the Commission will make a determination of whether or not reasonable grounds exist to believe that unlawful discrimination has occurred. The Commission shall issue a statement of finding in support of its determination.

- A. No reasonable grounds. If the Commission finds no reasonable grounds to believe that unlawful discrimination has occurred, it will dismiss the complaint. The Commission will promptly notify the parties of the dismissal and provide them a copy of its statement of finding.
- B. Reasonable grounds. If the Commission finds reasonable grounds to believe that unlawful discrimination has occurred, it will so notify the parties of its determination and provide them ~~with~~ a copy of its statement of finding. The Commission's Compliance Officer or her/his designee will then ~~direct its representatives to~~ endeavor to ~~eliminate the discrimination~~ resolve the matter by informal means such as conference, conciliation, or persuasion.
- C. New investigation. If, subsequent to a finding, the Commission determines that there have been relevant, factual errors or relevant omissions of fact ~~which that~~, if they are true, would likely change the finding of the Commission, it may order a new investigation of the matter. The Commission will promptly notify the parties of its decision to investigate the matter again.

## 2.08 COMMISSION DECISION UNDER EMERGENCY PROCEDURE

If the preliminary investigation of the complaint persuades the Commission's Executive Director or other designated employee that a situation comparable to those described in 5 M.R.S.A. § 4612(4)(B) exists, the Executive Director or other designated employee shall so notify the Commission. As soon as practical after notification, the Commissioners will consider the matter by means of a special meeting or other appropriate method. The Executive Director or other designated employee will take all reasonable steps to notify the parties of the special meeting or other appropriate method and of their right to participate.

- A. If the Commission finds no reasonable grounds to believe that unlawful discrimination has occurred, it will issue an order dismissing the complaint. The Commission shall issue a statement of finding in support of its determination.
- B. If the Commission finds reasonable grounds to believe that unlawful discrimination has occurred, but does not believe that irreparable injury or great inconvenience will be caused to the victims of such discrimination if relief is not immediately granted; it will notify the parties of its determination, provide them with a copy of its statement of finding and process the complaint under its non-emergency procedure.
- C. If the Commission finds reasonable grounds to believe that unlawful discrimination has occurred and further believes that irreparable injury or great inconvenience will be caused the victim or victims of such discrimination if relief is not immediately granted, it ~~will~~may request ~~the its legal counsel~~Commission Counsel or her/his designee to file a civil action in the Superior Court seeking appropriate relief. As soon thereafter as practicable, the Commission shall issue a statement of finding in support of its determination.

## 2.09 POST-DETERMINATION CONCILIATION

- A. Conference, conciliation and persuasion.

In conciliating a matter in which a determination of reasonable grounds has been made pursuant to the non-emergency procedure of section 2.07(B) of these regulations, the Commission shall attempt to achieve a just resolution and to obtain assurances that the respondent will eliminate the unlawful discrimination and take any appropriate ~~corrective~~affirmative action. Disposition of a matter pursuant to this section shall be in the form of a written agreement and approved by a majority of the Commission, and notice thereof shall be sent to the parties. Upon ascertainment by the ~~designated Commissioner or Commission employee~~Commission's Executive Director or her/his designee that the terms of the signed agreement have been met, the proceeding shall be dismissed.

- B. Refusal of respondent to cooperate.

If a respondent fails or refuses to confer with the Commission or its representatives, or fails or refuses to make a good faith effort to resolve any dispute, the Commission may terminate its efforts to conciliate the dispute. In such event, the respondent shall be notified promptly, in writing, that such efforts have been unsuccessful.

C. Refusal of complainant to agree.

If a complainant fails or refuses to agree to the terms of a conciliation agreement or settlement ~~which~~that the Commission believes represents a just resolution of the complaint of discrimination, the Commission may execute a conciliation agreement with the respondent limited to assurances that the respondent will eliminate such unlawful discrimination and take any appropriate ~~affirmative~~corrective action. The proceeding shall be dismissed upon ascertainment by the ~~designated Commissioner or Commission employee~~Commission's Executive Director or her/his designee that the terms of the signed agreement have been met. Where the complainant is not a party to such a conciliation agreement, the execution of the agreement by the Commission and the respondent shall not extinguish or in any way prejudice the complainant's right to pursue any and all appropriate individual remedies.

D. Confidentiality of conciliation efforts.

~~Nothing~~Everything said or done during and as part of the Commission's informal endeavors to eliminate unlawful discrimination by conference, conciliation and persuasion is confidential and may not be disclosed~~may be made a matter of public information by the complainant, respondent or Commission, or used as evidence in a subsequent civil action~~ without the written consent of the parties concerned or used as evidence in any subsequent proceeding, civil or criminal, except in a civil action alleging a breach of agreement filed by the Commission or a party. Notwithstanding this provision, the Commission and its employees have discretion to disclose such information to a party as is reasonably necessary to facilitate conciliation. In addition, the Commission will insist that the executed conciliation agreement contain a provision that the agreement shall be made public, unless the complainant and respondent otherwise agree and the Commission determines that disclosure is not required to further the purpose of the Act. ~~This provision does not apply to disclosure by the complainant, respondent or Commission, of the executed conciliation agreement unless the complainant, respondent and the Commission agree in writing that the executed agreement will be confidential.~~

## 2.10 PROCEDURE AFTER FAILURE OF CONCILIATION

- A. ~~If a designated Commission employee~~ the Commission's Compliance Officer or her/his designee determines that conciliation efforts have failed, ~~she/he~~ shall so notify the complainant and respondent.
- B. When post-determination conciliation efforts have failed, the ~~Commission will forward the matter to its legal counsel with a request that he/she~~ Commission Counsel or her/his designee is authorized to file a civil action in the Superior Court seeking appropriate relief, including, but not limited to, temporary restraining orders and preliminary injunctions.
- C. When the Commission's ~~legal counsel~~ Counsel or her/his designee is unable to file expeditiously such a civil action, the Commission shall so notify the complainant of ~~his/her~~ her/his right to file a civil action pursuant to 5 M.R.S.A., Chapter 337, ~~Subchapter VI,~~ § 4621, and make available a referral list of attorneys who have indicated an interest in undertaking such litigation. The Commission shall furnish to the complainant, the respondent, or their cooperating attorneys, upon request, with access to the investigatory case file and will provide such technical assistance as possible under the existing circumstances. Referral under this subsection does not terminate the Commission's jurisdiction of the proceeding.

## 2.11 TIME LIMITS

- A. When these regulations establish any time limit for the filing, submission, or production of any document, record, file or other possible source of evidence, or for the filing of any request with the Commission, such item must be received in the office of the Commission before the close of business on the last day of the time limit.
- B. In computing any period of time prescribed or allowed by these regulations, the day of the act, event or default from or after which the designated period of time begins to run shall not be included, ~~;~~ ~~but~~ ~~;~~ The last day of the period shall be included, unless it is a Saturday, Sunday or legal state or federal holiday, in which event the period shall run until the end of the next day ~~which~~ that is not a Saturday, Sunday or legal state or federal holiday.
- C. The Commission's Executive Director or her/his designee, or the Commission, may extend any time limit provided in this ~~chapter~~ part for good cause shown, and shall notify the parties of any such extension.

## ~~2.12 DEFERRALS FROM FEDERAL GOVERNMENT AGENCIES~~

- ~~A. Charges of discrimination filed with the Equal Employment Opportunity Commission (EEOC) and the Department of Housing and Urban Development (HUD) are regularly deferred to the Maine Human Rights Commission for a sixty~~

~~(60) day period. Complaints filed with EEOC or HUD and deferred to the Maine Human Rights Commission shall be deemed to be filed with the Maine Human Rights Commission on the date of filing with EEOC or HUD. Upon receipt of a deferral, the Commission will notify the complainant that an investigation will be commenced. The Commission follows the same procedures in processing deferrals as it uses in processing complaints originally filed with the Commission.~~

- ~~B. At the end of the sixty (60) day deferral period, the EEOC and HUD may begin to process the charge of discrimination through their own procedures. The Maine Human Rights Commission retains jurisdiction to process a deferred complaint for a period of two years from the date of the alleged discrimination regardless of any action taken by other agencies.~~

## 2.12 ADVISORY RULINGS

- A. Upon written request of any interested person, the Commission's Compliance Officer or her/his designee may make an advisory ruling with respect to the applicability of the Maine Human Rights Act or the rules promulgated by the Commission to that person or an actual state of facts.
- B. Advisory rulings made pursuant to this section shall not be binding upon the Commission, provided that, in any subsequent civil action initiated by the Commission, any person's justifiable reliance upon the ruling shall be considered in mitigation of any civil penal damages or punitive damages sought by the Commission.

## **Sec. 2. Me. Hum. Rights Comm'n Reg., Chapter 9, is deleted in its entirety.**

Chapter 9: Housing Procedural Rule is deleted in its entirety.

Fiscal Impact Note: This proposed rule will not impose any cost on municipalities or counties.