

CITY OF CAMBRIDGE
CHRC RULES OF PROCEDURE
UNANIMOUSLY APPROVED BY THE COMMISSION
NOVEMBER 1, 2007

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CITY OF CAMBRIDGE
HUMAN RIGHTS COMMISSION
RULES OF PROCEDURE

I. SCOPE

These rules govern the practice and procedure before the Cambridge Human Rights Commission (hereinafter referred to as the “Commission” or “CHRC”) in all matters arising out of Chapters 2.76 and 14.04 of the Cambridge City Code (hereinafter “Code”), copies of which are available at the Commission’s offices and at the City Clerk’s Office, City Hall, Cambridge, Massachusetts. These rules shall be construed to secure the just, speedy, and inexpensive determination of every action. In any situation in which these rules do not specifically apply, the Commission may exercise discretion so as to achieve a just, speedy, and inexpensive determination of the issue. Pursuant to a work-sharing agreement with the Massachusetts Commission Against Discrimination, the MCAD regulations (804 C.M.R. 1.01, et seq.) shall apply to all cases dual-filed with the MCAD.

II. JURISDICTION

The Commission has jurisdiction:

- (A) To receive complaints and conduct investigations of any activity reasonably believed to be in violation of Chapter 2.76 or Chapter 14.04 of the Code. Such investigation may proceed upon the filing of a complaint with the Commission, or upon the Commission's own initiative;
- (B) To attempt by mediation to resolve any complaint over which it has jurisdiction and to hold hearings, issue summonses, compel the attendance of witnesses, administer oaths, take the testimony of any person under oath, and require the production of relevant evidence;
- (C) With respect to complaints not resolved by mediation:
 - 1. To file a complaint or report of its findings with any court or government agency having jurisdiction over the matter in question;

2. To seek or apply remedies as enumerated in Chapter 2.76.150 of the Code;
3. To seek or apply remedies as enumerated in Chapter 14.04.060 of the Code;
4. Use its best efforts to bring about compliance with its recommendations.

III. DEFINITIONS

The following words or phrases as used in these Rules of Procedure shall have the following meanings:

- (A) “Aggrieved Person,” for purposes of the Human Rights Ordinance shall mean any person who claims to have been injured by any unlawful practice listed in Chapter 2.76 of the Code. For purposes of the Fair Housing Ordinance, an aggrieved person shall mean any person who claims to have been injured or is about to be injured by any unlawful practice listed in Chapter 14.040 of the Code.
- (B) “Cambridge Human Rights Commission” or “Commission,” the City Department established pursuant to chapter 2.76.010 of the Code, whose primary function is to protect the human rights of all citizens of the City as set forth in the Human Rights and Fair Housing Ordinances.
- (C) “CHRC Case,” a case which is filed exclusively under the Cambridge Human Rights Ordinance, and which is not covered by state or federal discrimination statutes. CHRC cases include cases filed on the basis of transgender, family status in employment and public accommodation, marital status in employment and public accommodation, source of income in employment and public accommodation, and military status in employment and public accommodation. CHRC rules of procedure are the exclusive governing rules in such cases.
- (D) “Commission Staff” or “Staff,” the individuals employed by the City to perform investigative, administrative and/or ministerial functions

for the Commission under the supervision of the Executive Director. Student interns assigned to the Commission who work under the supervision of the Executive Director are considered to be staff for the purposes of these rules.

- (E) “Executive Director,” the individual employed by the City as the Executive Director of the Commission who is responsible for carrying out the policies and decisions of the Commission and for overseeing and implementing the investigative, administrative and ministerial functions of the Commission.
- (F) “Fair Housing Ordinance,” the City ordinance entitled “Chapter 14.04 Fair Housing” as codified in Chapter 14.04 of the Code.
- (G) “Hearing Commissioners,” one or more of the Commissioners designated by the Chairperson of the Commission to preside over public hearings in cases which have been certified for public hearing pursuant to the Human Rights Ordinance, section 2.76.150 G or the Fair Housing Ordinance, section 14.04.050 K.2
- (H) “HUD Case,” cases filed with the U.S. Department of Housing and Urban Development (“HUD”), under the federal Fair Housing Act, as well as with this Commission. HUD cases include housing cases filed on the basis of race and color, sex, national origin, religion, family status, and disability. HUD cases do not include housing cases filed on the basis of source of income, marital status, age or military status. HUD cases will be investigated pursuant to the CHRC rules relating to housing cases.
- (I) “Human Rights Ordinance,” the City ordinance entitled “Chapter 2.76 Human Rights Commission” as codified in Chapter 2.76 of the Code.
- (J) “Human Rights Commissioners” or “Commissioners,” the members of the Commission appointed by the City Manager of the City of Cambridge to serve without compensation for specified terms and who are responsible for carrying out the policies and provisions of the Human Rights and Fair Housing Ordinances.

- (K) “Investigating Officer,” the Executive Director or other Commission staff member acting under the supervision of the Executive Director, whose duty it is to investigate complaints of discrimination.
- (L) “Massachusetts Commission Against Discrimination (MCAD),” the state agency charged by statute with enforcing the state anti-discrimination laws, including M.G.L. ch. 151B; ch. 272, §92A, 98, 98A, 98B, 98C; ch. 149 §105D; and ch. 151C. “MCAD Case,” a case filed under M.G.L. ch. 151B, ch. 272, §92A, 98, 98A, 98B, 98C or ch. 151C. An MCAD case shall be investigated under the MCAD regulations (804 C.M.R. 1.01, et seq.)
- (M) “State Housing Case”, a housing case filed under state law to which the Fair Housing Act does not apply. State Housing Cases include cases filed on the basis of source of income, marital status, age, and military status. Such cases will be investigated pursuant to the MCAD regulations relating to housing cases.
- (N) “Party”, each individual or entity named as a Complainant or Respondent in the complaint.
- (O) “Person” for purposes of the Fair Housing Ordinance shall be defined as one or more individuals, partnerships, associations, corporations, labor organizations, legal representatives, mutual companies, unincorporated organizations, fiduciaries, trustees, trustees in bankruptcy, receivers, the City of Cambridge, and all political subdivisions, boards and commissions thereof. For purposes of the Human Rights Ordinance, “person” shall be defined as a natural person, and/or a corporation, firm, partnership, association, executor, administrator, guardian, trustee, agent, organization, and any other group acting as a unit.
- (P) “Reviewing Commissioner,” one or more of the Commissioners who review final investigative determinations on behalf of the Commission.

IV. COMPLAINT

- (A) Who may file. The following persons (hereinafter referred to as the Complainant(s)) may file a complaint with the Commission alleging one or more violations of the Human Rights or Fair Housing Ordinances:
1. Any aggrieved person or class of aggrieved persons.
 2. The duly authorized representative of any aggrieved person or class of aggrieved persons.
 3. The Commission itself.
- (B) Form and filing.
1. The complaint may be filed in person or by regular mail to the Commission's offices.
 3. The complaint shall be in writing, the original being signed under pains and penalties of perjury or sworn to by the Complainant before a person authorized to administer oaths.
 3. The original of the complaint shall be filed with the Commission.
 4. The complaint shall be upon forms prepared by the Commission, copies of which will be supplied by the commission upon request.
- (C) Contents. The complaint shall contain the following:
1. The appropriate identification of the Complainant(s) including full name(s), address(es), and telephone number(s);
 2. The appropriate identification of the person(s) alleged to have violated the Human Rights or Fair Housing Ordinances, including full name(s), address(es), and telephone number(s);
 - a. Use of Pseudonym - In MCAD Cases, the Complainant may be entitled to proceed using a pseudonym, subject to the approval of the Commission. In such cases, the MCAD

rules governing the use of a pseudonym, 804 C.M.R. 1.10(5)(d), shall apply.

3. A reference to the section of the Ordinances alleged to have been violated;
4. A plain and concise statement of the alleged discriminatory act(s); and;
5. The date or dates of the alleged discriminatory acts.

(D) Time of Filing

1. The complaint shall be filed within one hundred and eighty (180) days after the most recent alleged violation of the Human Rights or Fair Housing Ordinances. However, the 180 day requirement shall not be a bar to filing in those instances where facts are alleged which indicate that the unlawful conduct complained of is of a continuing nature, or when pursuant to an employment contract, an aggrieved person enters into a formal grievance proceeding concerning the alleged discriminatory acts within 180 days of the conduct complained of and subsequently files a complaint within 180 days of the outcome of such proceedings.
2. Provided, likewise, that the 180-day statute of limitations shall not be a bar to filing in those instances when an aggrieved person enters into a formal agreement to voluntarily mediate the alleged discriminatory acts within 6 months of the conduct complained of and subsequently files a formal complaint within twenty-one (21) days of the conclusion of such proceedings.
3. Provided also that the 180-day statute of limitations shall not be a bar to filing in those instances in which intentional misrepresentation by the Respondent or administrative errors by the Commission caused the Complainant to reasonably delay filing beyond the 6 month period.

(E) Manner of Filing

1. A complaint is not filed until it is received at the Commission's offices. The date stamped or noted in writing by a staff person at the Commission shall be prima facie evidence of the time and date of filing. The Commission may send copies of the complaint to those State and Federal agencies with apparent jurisdiction over the subject matter of the complaint. When violations of the Fair Housing Ordinance are alleged, the Commission shall send a copy of the complaint to the United States Department of Housing and Urban Development (HUD) for filing in all cases where HUD has apparent jurisdiction over the subject matter of the complaint.
2. Upon the filing of the complaint, the Commission shall serve notice upon the Complainant acknowledging the filing.

(F) Amendments

1. A complaint or any part thereof may be amended as of right to cure technical defects or omissions, including failure to swear to the complaint.
2. Amendments, which clarify and/or amplify allegations made in the original complaint or allege additional unlawful discriminatory practices related to or arising out of the subject matter of the original complaint may be made at the discretion of the Commission.\
3. Any amendment must be made by motion and may relate back to the original filing date.

(G) Substitution, Joinder, Amendment, or Addition of Parties

1. The Investigating Officer having responsibility for a case, on his or her motion or upon motion of any party, at any time during the investigation or any proceeding, may make such substitution, joinder or amendment of parties as justice or convenience may require.

2. All parties shall be notified of any such change(s) within seven (7) days of said change(s). The hearing shall not be held sooner than forty-five (45) days after notification of such changes, unless such requirement is waived by all parties. Notification shall be by both first class mail and certified mail, return receipt requested to last known address.

(H) Consolidation

1. The Investigating Officer having responsibility for a case, upon his/her motion or upon the motion of a party, may order proceedings involving a common question of law or fact to be consolidated for investigation, conciliation, or hearing on any or all of the matters at issue in such proceedings. Notification of consolidation shall be as set forth in part (G) above.
2. Any parties who are joined or added to the proceeding shall be apprised of their rights and obligations consistent with Sections IV and V of these Rules.

V. NOTICE TO PARTIES

- (A) The Commission shall promptly serve a copy of the complaint and any amendments upon the Respondent(s) named in the complaint by personal service or certified mail, return receipt requested, to his/her last known address or place of business. The Complaint shall be accompanied by a notice to Respondent:
1. Stating that all records relating to the case under investigation must be retained until final resolution of the complaint;
 2. Stating that retaliation is prohibited and will be cause for further action by the Commission;
 3. Describing his/her procedural rights and obligations under the law; and
 4. Stating that the case has been assigned to an Investigating Officer.

- (B) The Commission shall promptly send a copy of the complaint to the Complainant by regular mail. The complaint shall be accompanied by a notice to the Complainant describing his/her procedural rights and obligations under the law and stating that the case has been assigned to an Investigating Officer.

VI. RESPONDENT'S ANSWER

- (A) The Respondent shall file a written answer to the complaint. Such answer will be in the form of a position statement, which will set forth a complete statement of the facts of the case, as well as all legal defenses, which Respondent may raise during the course of investigation.
- (B) Such answer must be filed no later than ten (10) days after receipt of the complaint for complaints filed pursuant to the Fair Housing Ordinance and twenty-one (21) days after receipt of the complaint for CHRC Cases and MCAD Cases.
- (C) Respondents shall file verified written answers to any substantive amendments no later than ten (10) days after receipt of the amendment for complaints filed pursuant to the Fair Housing Ordinance and twenty-one (21) days after receipt of the amendment for CHRC Cases and MCAD Cases.
- (D) The answer shall be in writing, signed and sworn to by the Respondent before a person authorized to administer oaths, or contain the words "signed under pains and penalties of perjury."
- (E) For all MCAD Cases, the requirements of 804 C.M.R. 1.10(8) regarding the Respondent's answer, shall apply.
- (F) The answer shall be deemed filed on the date it is received in the Commission's offices. The date stamped or noted in writing by a staff person shall be prima facie evidence of the time and date of filing.

- (G) The Respondent shall serve the Complainant with a copy of the answer by regular mail concurrently with the service upon the Commission.
- (H) Application for extension of time for filing answers may be made to the Investigating Officer who may grant or deny such application.
- (I) All subsequent submissions of the Respondent shall be served upon the Complainant unless, at the request of the Respondent, the Commission shall determine that there is good cause for the information to be withheld from the Complainant.

VII. CONFIDENTIALITY

- (A) While the investigation of any case is pending, the contents of the case file, with the exception of the complaint, shall be confidential. The complaint may be made available as a public document pursuant to any applicable exemptions identified in the public records law, including but not limited to G.L. c. 66, 66A, and c. 4 §7 (26), unless placed under protective order by the Commission, or processed as a pseudonym complaint.
- (B) At any time after the issuance of a final disposition, the official record in every complaint investigated by the Commission; which shall include the complaint and any amendments thereto, the Respondent's answer, and the final investigative disposition, shall be available for public inspection upon making appropriate arrangements with the staff of the Commission, unless placed under protective order by the Commission or processed as a pseudonym complaint. These records shall be made available subject to all applicable provisions of the public records law.
- (C) In any complaint filed pursuant to the Fair Housing Ordinance, any conciliation agreement arising out of conciliation efforts by the Commission shall be an agreement between the Complainant and the Respondent and shall be approved by the Commission. Such agreement shall be made public unless the parties agree otherwise and the Commission determines disclosure is not necessary to further the purposes of the ordinance.

VIII. INVESTIGATION

- (A) Complaints filed at the Commission are administratively assigned to the Executive Director for investigation unless the Chairperson of the Commission, at the request of the Executive Director, designates one or more of the Commissioners to conduct the investigation. The investigation may be conducted or assisted by an appropriate staff person under the supervision of the Executive Director.
- (B) The Commission may interview witnesses, issue subpoenas requiring the attendance of persons or the production for examination of books, papers, computerized data and records, and other tangible things, serve interrogatories on either party, and convene fact finding or mediation conferences.
- (C) Motions
 - 1. Motions filed during the investigative stage.
 - a. Motions shall be served directly on the Commission, with a copy to the opposing party/parties.
 - b. The opposing party/parties shall have 14 days from receipt of the motion to file an opposition with the Commission, with a copy served on the moving party. No reply or sur-reply shall be allowed.
 - 2. Motions filed subsequent to a finding of probable cause

The same procedure which applies to motions prior to a finding of probable cause shall apply to motions subsequent to a finding of probable cause.
- (D) In cases in which the Investigating Officer determines that investigation is necessary, the Commission may require the parties to participate in a mediation conference to attempt to resolve the complaint prior to the causal determination.

IX. DISPOSITIONS OTHER THAN CAUSAL DETERMINATIONS

For all MCAD Cases, 804 C.M.R. 1.15 shall govern the investigative dispositions available. For all other cases, the following rules shall apply.

(A) Deferral

1. Whenever the Investigating Officer has reason to believe that another agency having jurisdiction over the parties and the subject matter contained in the complaint filed with the Commission is conducting a prompt and thorough investigation of such complaint in a manner consistent with the standards and requirements of the Commission, the Investigating Officer may defer its investigation of the complaint until such agency has completed its investigation or the complaint is resolved.
2. All parties shall be duly notified of any decision to defer the investigation.
3. The right of the Commission to initiate or reactivate an investigation of the same complaint shall not be affected by the deferral to such agency.
4. A complaint shall not be considered for investigation if the dispute has been resolved in a court of competent jurisdiction. The court's final decision in the matter will serve to bar the Commission from initiating its own investigation into the allegations of the complaint.

(B) Default

The Investigating Officer shall attempt to secure the Respondent's cooperation with investigation of the complaint. If at any time during investigation of the complaint, the Respondent refuses or fails to cooperate with the investigation, and the Investigating Officer is able to document that substantial efforts were made to secure the Respondent's cooperation, the Investigating Officer may find the Respondent in default and move immediately to certify the complaint to public hearing.

(C) Withdrawal

1. A Complainant may request withdrawal of a complaint by filing a written and signed request with the Commission, setting forth the reasons therefor. The Investigating Officer may grant or deny such request, as the interests of justice require.
2. Upon granting such request, the Investigating Officer shall notify all parties that the complaint has been withdrawn.
3. Such action notwithstanding, withdrawal of a complaint shall not affect the Commission's right to initiate a complaint based upon the same facts.
4. In MCAD Cases, the Investigating Officer shall make a recommendation to the MCAD Commissioner that the case may be withdrawn. The MCAD Commissioner may grant or deny such a recommendation.

(D) Lack of Jurisdiction

1. Whenever it appears upon investigation of a complaint that the Commission lacks jurisdiction over the parties or the subject matter of the complaint, the Investigating Officer shall dismiss the complaint and shall so notify the parties in writing, including the reasons therefor.
2. In MCAD Cases, the Investigating Officer shall make a recommendation to the MCAD Commissioner that the MCAD has no jurisdiction over the case. The MCAD Commissioner may grant or deny such a recommendation.

(E) Administrative Closure

1. If the public interest so requires, the Investigating Officer may administratively close the case for reasons including but not limited to the following:
 - a. Bankruptcy of the Respondent, death of a party, or inability to locate a party.

- b. Unreasonable refusal by Complainant to cooperate with the processing of the case.
2. The Commission shall notify the parties in writing of the dismissal including the reasons therefor.
3. In MCAD Cases, the Investigating Officer shall make a recommendation to the MCAD Commissioner that the case should be administratively closed. The MCAD Commissioner may accept or reject such a recommendation.

(F) Agreements Reached with the Assistance of the CHRC

1. The Commission shall attempt to achieve just resolutions of complaints and obtain assurances, where appropriate, that the Respondent will satisfactorily remedy any violations of the rights of the person aggrieved and will act to prevent such violations in the future. Remedies may include, but are not limited to, monetary damages including damages for emotional distress, attorney's fees, and other types of relief calculated to redress the alleged injury. Such agreements may be obtained at any time during the proceedings.
2. The terms of agreements reached with assistance of the CHRC shall be reduced to writing, shall be signed by all parties and by the Executive Director and approved by the Chairperson, and will be enforceable as a Final Order of the Commission. Such agreements shall protect the public interest. Provisions of the following types may be sought in vindication of the public interest:
 - a. Provisions to eliminate discriminatory practices complained of;
 - b. Provisions to prevent further discriminatory practices;
 - c. Affirmative activities to overcome discriminatory practices;
 - d. Apologies;

- e. Reporting requirements;
 - f. Monitoring and enforcement activities; and
 - g. Educational and training requirements.
3. Such agreements shall be known as:
- a. Pre-Determination Settlement Agreements when signed before a causal determination is made;
 - b. Conciliation Agreements when signed after a causal determination is made;
 - c. Consent Orders when signed after the commencement of public hearing.
4. The above provisions do not apply to agreements reached privately between the parties without the involvement of the CHRC.

X. CAUSAL DETERMINATIONS

(A) Human Rights Ordinance

The procedure for making causal determinations with respect to complaints made pursuant to the Human Rights Ordinance shall be as follows:

1. At the conclusion of the investigation, the Investigating Officer shall make a final investigative report, which shall be promptly filed with the Commission. The report shall contain findings of fact and a determination as to whether there is probable cause that the Respondent has committed an unlawful practice. All final investigative reports shall clearly set forth the basis for the determination. Where the complaint contains allegations of more than one unlawful practice, the Investigating Officer shall make a determination of probable cause or lack of probable cause with respect to each allegation.

2. The Reviewing Commissioner shall review and sign the final investigative report. Once signed, the report, the findings of fact and determination contained therein shall become the findings and determination of the Commission.
3. In accordance with the role of this Commission as an adjudicatory agency, a Reviewing Commissioner must be free of bias. If a Reviewing Commissioner believes that for any reason, s/he cannot make an unbiased decision on the merits of the case, such Commissioner must recuse him/herself from reviewing the case.
4. If the Reviewing Commissioner does not concur with the findings of the Investigating Officer with regard to any case, the Investigating Officer may appeal to the Full Commission for a decision on the case. The Commissioner(s) serving as Designated Hearing Officer(s) at the time of such appeal shall not participate in discussions of the case or in the final decision of the Full Commission. Decision shall be made by majority vote with the Reviewing Commissioner abstaining.
5. If after appropriate investigation, the Investigating Officer determines that no probable cause exists for crediting the allegations of the complaint, or if the Commission so determines notwithstanding the determination by the Investigating Officer, the Commission shall dismiss the complaint. The Commission shall within ten (10) days of the final determination notify the Complainant of the outcome in writing.
6. If after appropriate investigation, the Investigating Officer determines that there is substantial evidence upon which a fact finder could form a reasonable belief that the Respondent committed an unlawful practice, or if the Commission so determines notwithstanding a negative report from the Investigating Officer, the Commission shall forthwith endeavor by conference, conciliation, and persuasion to eliminate the unlawful practice. The Commission and its staff shall not disclose what has occurred in the course of such endeavors except to disclose the terms of conciliation when the complaint has been disposed of in this manner.

7. In the case of failure to eliminate the unlawful practice by the process of mediation or after ninety (90) days have passed from commencement of mediation, or if probable cause exists that a conciliation agreement has been violated, the Commission shall issue and serve in its name a written notice, together with a copy of the complaint, requiring the Respondent to answer the charges of the complaint at a hearing of the Commission at a reasonable time and place as specified in the notice.
8. For MCAD cases, the Investigating Officer with the approval of the Reviewing Commissioner shall make a recommendation of probable cause or no probable cause to the MCAD Investigating Commissioner who shall accept or reject the recommendation.

(B) Fair Housing Ordinance

The procedure for making causal determinations with respect to complaints made pursuant to the Fair Housing Ordinance shall be the same procedure outlined in section (A) above, except as to the following requirements:

1. The final investigative report shall issue within one hundred (100) days after the receipt of the complaint unless impracticable, and if impracticable, the Commission shall notify the Complainant and the Respondent in writing and state the reasons for the delay;
2. Any conciliation agreement arising out of conciliation efforts by the Commission shall be an agreement between the Respondent and the Complainant, and shall be signed by all parties and by the Executive Director, and approved by the Chairperson, and shall be made public unless the Complainant and the Respondent otherwise agree and the Commission determines disclosure is not necessary to further the purposes of this chapter;
3. Any Complainant not represented by counsel who enters into a conciliation agreement arising out of conciliation efforts by the Commission, shall have a period of ten days in which to seek the advice of counsel. During such period, the Complainant may rescind the agreement. After such period, if the agreement is not

rescinded, the agreement shall be final and shall not be subject to rescission.

4. If lack of probable cause is found, the Commission shall dismiss the complaint, notify the parties of its finding and inform the Complainant of his right to commence a private civil action in Superior Court within ninety (90) days of the date of dismissal or two (2) years from the date of the violation alleged whichever occurs later.
5. If probable cause is found both the Complainant and Respondent shall be notified in writing and either party may elect, within twenty days from receipt of the Commission's finding, to file a civil action in the Superior Court.
 - a. Upon notification to the Commission that a timely election has been made, the Commission shall immediately notify the office of the Attorney General who may file a civil action on behalf of the aggrieved person within thirty (30) days. The Commission shall administratively close the case without prejudice.
 - b. If a timely election is not made, the case shall proceed to a public hearing.

XI. PUBLIC HEARING

(A) Conciliation Efforts and Stay of Reports

At any time, the Commission may endeavor to eliminate the alleged violation of Chapter 2.76 or Chapter 14.04 of the Code by mediation, conciliation, or other appropriate action. If a Conciliation Conference is scheduled, it must be scheduled within twenty (20) days of the conclusion of the election period, unless impracticable. The Commission may stay the approval of the Final Investigative Report for a reasonable time after completion, if it is the Commission's judgment said stay would assist the Complainant, Respondent, and the commission in settlement through conciliation or mediation. The Commission shall use its best efforts to obtain a settlement through conciliation after a finding of probable cause has been made.

(B) Certification to Public Hearing

After a finding of probable cause, if reasonable conciliation efforts have been unsuccessful, the Commission shall instruct the Executive Director to schedule the case for public hearing.

(C) Procedures for Public Hearing under the Human Rights Ordinance

1. The Commission shall issue and serve in its name a notice requiring the Respondent to answer charges of the complaint at a hearing of the commission, together with a copy of the complaint. The notice shall set forth the date, time and place of the hearing and shall be sent to each party and each attorney of record;
2. Periodically the Chairperson of the Commission shall designate one or more Commissioners as Hearing Commissioners to preside over any cases which come before the Commission and shall designate one of them as the Chief Hearing Commissioner. The Designated Hearing Commissioner(s) shall serve a term of months to be determined by the Commission. At no time may a Commissioner who has participated in investigation of the complaint certified for public hearing serve as a Hearing Commissioner for said case.
3. The Respondent may file a written verified answer to the complaint and appear at such hearing in person with or without counsel and submit testimony.
4. The Commission may designate a staff member to present evidence on behalf of the Complainant or may permit the Complainant to do so with or without counsel. The testimony taken at the hearing shall be under oath and recorded.
5. The Commission shall not be bound by the strict rules of evidence prevailing in the courts.
6. The Commission adopts Rule 803(8) of the Federal Rules of Evidence, which permits as an exception to the hearsay rule, the admission of records, reports, statements or data compilations of

public agencies setting forth factual findings resulting from an investigation made pursuant to authority granted by law, unless the source of the information indicates a lack of trustworthiness.

(D) Fair Housing Ordinance

The procedures for holding a public hearing pursuant to the Fair Housing Ordinance are the same as set forth in section XI (C) above with the exception that the Massachusetts Law of Evidence shall apply.

(E) Hearing Commissioners

1. Periodically the Chairperson of the Commission shall designate one or more Commissioners as Hearing Commissioners to preside over any cases which come before the Commission and shall designate one of them as the Chief Hearing Commissioner. The Designated Hearing Commissioner(s) shall serve a term of months to be determined by the Commission. At no time may a Commissioner who has participated in investigation of the complaint certified for public hearing serve as a Hearing Commissioner for said case.
2. In accordance with the role of this Commission as an adjudicatory agency, a Hearing Commissioner must be objective and unbiased. If a Hearing Commissioner believes that for any reason, s/he cannot conduct the legal proceedings in an unbiased manner, such Commissioner must recuse him/herself from the case. If any party reasonably believes that the Hearing Commissioner is biased, such party can file a motion that the Hearing Officer recuse him/herself from the case.
3. Hearing Commissioners shall conduct a fair hearing and take all necessary action to avoid delay and maintain order. They shall have all powers necessary to these ends, including, but not limited to, the power to:

- a. arrange and issue notice of the date, time, and place of hearing(s), or upon due notice to all parties, to change the date, time, or place of hearing(s) previously set;
- b. hold conferences to settle, simplify, or fix issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of proceedings;
- c. require parties to state their positions with respect to various issues in connection with the proceedings;
- d. determine the scope of discovery;
- e. administer oaths or affirmations;
- f. rule on motions and other procedural items;
- g. regulate the course of the hearing and the conduct of counsel;
- h. examine witnesses and direct witnesses to testify;
- i. receive, rule on, and limit evidence;
- j. fix the time for filing motions, petitions, briefs, or other matters;
- k. issue initial or interim decisions, recommendations, or final decisions;
- l. take any action authorized by Chapter 2.76 or Chapter 14.04 of the Code or these rules.

(F) Representation Of Parties

- 1. At any stage in proceedings before the Commission, any party may be represented by counsel retained by such party at the party's own expense.
- 2. The Executive Director, or his/her designee, may present evidence on behalf of the Complainant during proceedings after a finding of

probable cause has been issued. Complainant may designate outside counsel to represent him/her at Complainant's own expense.

(G) Ex Parte Communications

In any adjudicatory proceeding or in any appeal there from, neither a party nor his/her authorized representative shall communicate ex parte with any Hearing Commissioner for information with respect to the status of the adjudicatory proceeding, during the pendency of that proceeding.

(H) Pre Hearing Conference

The Chief Hearing Commissioner or designee, prior to commencement of the Public Hearing, may conduct a pre-hearing conference with the parties or their representatives, and may issue Pre-Hearing orders concerning any of the following matters:

1. stipulations;
2. discovery;
3. motions;
4. witnesses;
5. identification of facts and issues in dispute;
6. submission of legal memoranda in support of a party's position;
7. any other matter, which in the judgment of the Chief Hearing Commissioner, is likely to expedite the case.

(I) Continuances

Any party requesting a continuance shall file a written request with the Commission and shall provide all other parties with a copy of the request. The Chief Hearing Commissioner shall grant or deny the request, as the interests of justice require.

(J) Default

1. **Entry of Default.** Whenever any party properly served with notice of a public hearing fails to obtain a continuance and fails to appear alone or with counsel, the Chief Hearing Commissioner shall enter his or her default. After a default is entered against any party, a notice of entry of default shall be served on all parties. Within fourteen (14) days of receipt of the notice of default the party in default may file a motion to set aside the default, which shall be served on all parties, stating specific reasons why there is good cause to set aside the default. Any opposing party may respond to such motion within fourteen (14) days of receipt.
2. **Complainant's Default.** If Complainant is in default, the complaint shall be dismissed with prejudice unless Complainant files a motion to set aside the default. If Complainant files such a motion and it is granted, the case shall proceed to a public hearing. If such motion is denied, the case shall be dismissed with prejudice.
3. **Respondent's Default.** If the party in default is the Respondent, the Respondent may file a motion to set aside the default. If such motion is granted the case will proceed to a public hearing. If such motion is denied, a default judgment will be entered against the Respondent, stating that the Respondent is liable for discrimination.
4. **Hearing to Determine Damages.** After the entry of the default judgment against a defaulting Respondent, the Commission shall hold a hearing to determine the damages to which the Complainant is entitled. Evidence may be presented by both parties. However, only evidence relevant to a determination of the amount of damages shall be allowed. No evidence relative to a determination of liability shall be presented at this hearing.
5. **Order Upon Default.** After the hearing to determine damages, the Chief Hearing Commissioner shall enter a Final Decision and Order. This order shall require the Respondent to pay monetary damages, and/or to take any other affirmative action, which in the judgment of the Chief Hearing Commissioner is necessary to resolve the complaint.

(K) Discovery

1. A party shall be allowed to conduct reasonable discovery. A request for discovery shall be served in writing on the opposing party with a copy to be served to the Commission.
2. A discovery request shall be answered in full within thirty (30) days of receipt unless the opposing party files an objection.
3. If a party objects to the form or the content of a request for discovery, that party may file a written motion to that effect. This motion shall give specific reasons for the objection and be filed with the Commission within fourteen (14) days of the objecting party's receipt of the discovery request. The Chief Hearing Commissioner upon such motion may modify the discovery request in a manner, which is reasonable and consistent with the public interest.
4. If a party files a motion objecting to the discovery request and requesting modification of the request:
 - a. If the Chief Hearing Commissioner grants the motion, the moving party shall answer the discovery request within thirty (30) days of that party's receipt of the modified discovery request.
 - b. If the Chief Hearing Commissioner denies the motion, the moving party shall answer the discovery request within thirty (30) days of receipt of the Chief Hearing Commissioner's order denying the motion.
5. Discovery available to all parties shall include
 - a. Interrogatories, which shall be limited to a total of thirty (30) per party;
 - b. Requests for Admissions, which shall be limited to a total of thirty (30) per party;
 - c. Requests for Documents; which shall be limited to a total of thirty (30) per party.
6. Non-compliance with a discovery order shall constitute an admission that the interrogatories or requests for admission, if answered, would

have established facts in accordance with the claim of the requesting party.

(L) Subpoenas

1. Any party may compel the attendance and testimony of a witness at public hearing and production of evidence by filing a request with the Chief Hearing Commissioner for the subpoena as authorized by Chapter 2.76 or Chapter 14.04 of the Code. Fees and other costs in connection with a subpoena shall normally be borne by the requesting party, although the Hearing Commissioners may waive such fees and costs if the party is indigent or for other good cause.
2. The Commission may compel the attendance and testimony of a witness and the production of evidence at any point during the investigative stage or after a finding of probable cause. The request for a subpoena shall be made by the Investigating Officer during the investigation or by a Hearing Commissioner after a finding of probable cause, as authorized by Chapter 2.76 or Chapter 14.04 of the Code.
3. Any witness subpoenaed may request in writing that the subpoena be vacated or modified. Upon such request, the Commission or its designee shall review the subpoena and, after such investigation as he or she considers appropriate, may grant the request in whole or in part if the interests of fairness and justice so require.
4. Upon a failure of any person to comply with a subpoena issued pursuant to these regulations and not vacated or modified, the Commission may apply to the Superior Court for an order requiring compliance.

(M) Transcript and Record

1. The Commission shall electronically record all testimony and arguments offered at a public hearing.
2. Any party to a hearing may, at that party's own expense, have a private stenographer present at any hearing provided that a copy of any resulting private transcript be furnished to the commission within twenty (20) days of its completion.

3. A party desiring a copy-of the electronic recording of the public hearing shall so request in writing and bear the expense of copying. If a party is indigent, the expense shall be waived in whole or in part.
4. In addition to the tape recording of the hearing, the record shall consist of the written transcript, if any, the complaint, answer, stipulations, exhibits in evidence and any motions (and the dispositions thereof) filed after certification to public hearing.

(N) Stipulations

Written stipulations may be introduced in evidence if signed by the persons sought to be bound thereby or by their authorized representatives. Oral stipulations may be made on the record during a public hearing.

(O) Administrative Notice

The Commission may take administrative notice of matters as might be judicially noticed by the courts of the United States or of the Commonwealth of Massachusetts and of technical and general facts within the Commission's specified areas of knowledge.

(P) Oral Argument

The Commission shall allow the parties reasonable time for oral argument prior to and at the close of evidence presented during the hearing.

(Q) Witnesses

Either party may call witnesses to testify during the proceeding and to cross-examine opposing witnesses.

(R) Briefs and Proposed Findings of Fact

Briefs and proposed findings of fact may be filed by parties. Amicus curiae briefs may be filed by any interested person. Such briefs or proposed findings of fact may be filed during the course of a public hearing or within fifteen (15) days thereafter. The Chief Hearing Commissioner may grant a continuance for good cause.

(S) Final Report of Hearing Commissioners

1. The Hearing Commissioners shall report to the Commission, in writing within sixty (60) days of the hearing, their findings, conclusions, and recommendations, together with a record of the proceedings.
2. The contents of the report shall set forth:
 - a. A concise statement of the case, including the citation of each section of Chapter 2.76 or Chapter 14.04 of the Code found to have been violated by the Respondent if the Respondent is found to be liable for discrimination;
 - b. If Respondent is not found to be liable for discrimination, a statement that the Respondent has not been found to be in violation of any portion of Chapter 2.76 or Chapter 14.04 of the Code.
 - c. Rulings on admission of evidence and other procedural matters, which may be set forth by references to the pages of the transcript wherein such rulings are recorded;
 - d. Findings of fact;
 - e. Conclusions of law; and
 - f. Recommended disposition of the matter.
3. All reports shall become a part of the record and shall be filed with the Commission which shall serve copies thereof upon the Complainant, Respondent and Executive Director.

XII. APPEAL FROM HEARING COMMISSIONERS' REPORT

- (A) Procedure for Filing Appeal of Report of Hearing Commissioners.

Upon receipt of the Hearing Commissioner's final report, any party objecting to the findings or recommendations of the Report, may file an appeal within twenty (20) days, by submitting a brief to the Commission. Within twenty

(20) days of such filing, a brief opposing the appeal may be filed in response to the appeal. No further response will be entertained unless allowed or requested by the Commission or the Chairperson. Any party filing a brief shall provide copies to all other parties.

(B) Waiver of Objections

A party will be deemed to have waived all objections to the findings, conclusions, and recommendations of the Hearing Commissioners unless an appeal is filed as provided in subsection (A) of this section.

(C) Briefs on Appeal

1. The briefs on appeal shall contain:
 - a. a short statement of the case;
 - b. a summary of the basic positions of the party filing;
 - c. the grounds upon which the appeal rests; and
 - d. the arguments in support of the appeal with appropriate references to the record and legal authorities.
2. The appeal may also include:
 - a. Specific findings and conclusions proposed in lieu of those from which the appeal is being taken,
 - b. any proposed additional findings and conclusions.
3. Appeal from the form of recommended order shall specify the portions therefor from which the appeal is being taken, and may set forth a form of order suggested in lieu of that recommended by the Hearing Commissioners.

(D) Briefs Opposing Appeals

Briefs opposing appeals shall generally follow the same style prescribed for briefs on appeal, but may omit a statement of the case so far as it is correctly stated in the brief on appeal.

(E) Review by the Commission Upon Appeal

Within sixty (60) days following the filing of an appeal, the Commission shall review the matter on the entire record including previously filed briefs and objections. The Commission may remand the matter to the Hearing Commissioners for the taking of further evidence.

(F) Review by the Commission Upon No Appeal

When the time for filing an appeal under these rules and regulations has expired and neither the Complainant nor the Respondent has filed an appeal with the Commission, the decision of the Hearing Commissioner is subject to review by the full Commission. In the event the Commission exercises its rights to review the decision and makes a preliminary determination that the decision of the Hearing Commissioners should not be affirmed, it shall give the parties appropriate notice thereof and an opportunity to file briefs, and the Commission may then proceed to take such action as it could have taken had an appeal been filed.

(G) Action By Commission

The Commission may adopt the findings of fact submitted by the Hearing Commissioners in their report or revise any findings which it determines to be erroneous, paying due respect to the role of the Hearing Commissioners as the sole judges of the credibility of the testimony presented at the hearing. The Commission may adopt or modify the recommendation of the Hearing Commissioners. Whenever the Commission modifies the findings or recommendations of the Hearing Commissioners, it shall state the reasons therefor in its vote and in a memorandum.

(H) Non-Participation by Commission Members

The Hearing Commissioners shall not vote in any consideration of an appeal from their findings and recommendations, notwithstanding any other provisions herein.

(I) Final Order

The Commission shall issue its final order and provide copies to the Complainant, Respondent and Executive Director. The final order shall state its findings of fact. If the Respondent is found liable for discrimination, the order shall forthwith seek relief through one or more of the actions provided for or set forth in Chapter 2.76 of the Code, or otherwise permitted by-law. If the Respondent is not found liable for discrimination, the order shall so state and shall state that the case is thereby dismissed.

(J) Dismissal of Proceeding

In the event that the Commission determines that a proceeding should be dismissed, the Executive Director shall notify the Respondent, Complainant, and any other agencies with which the Complaint may have been cross filed.

XIII. BREACH OF AGREEMENT/CONSENT ORDER

The Commission retains jurisdiction after execution of any agreement. Upon motion of the Complainant, the Respondent, the Executive Director, or a Commissioner asserting that a Consent Order, Conciliation Agreement, or Pre-Determination Settlement Agreement has not been complied with or requires modification, the Commission may in its discretion re-open the case and certify it to a public hearing to determine whether the agreement has been complied with or requires modification and to take such further action as may be appropriate.