

# **LEXINGTON-FAYETTE URBAN COUNTY HUMAN RIGHTS COMMISSION**



## **RULES OF PRACTICE AND PROCEDURE FOR COMPLAINTS, INVESTIGATIONS, CONCILIATIONS AND PUBLIC HEARINGS**

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## PREAMBLE

The Lexington-Fayette Urban County Human Rights Commission was established as the Lexington-Fayette County Human Rights Commission in 1966 and by a joint agreement between the city of Lexington and Fayette County Fiscal Court, and by charter of the merged city-county government in 1974, for the following purposes:

### §2-30

(to) endeavor to promote and secure mutual understanding and respect among all ethnic groups in Fayette County, and shall act as conciliator in controversies involving inter-group and inter-racial relations; . . . (to) cooperate with federal, state and other local agencies in efforts to develop harmonious inter-group and inter-racial relations and shall endeavor to enlist the support of civic, religious, labor and commercial groups and leaders dedicated to the improvement of human relations and the elimination of discriminatory practices . . . (to) receive Complaints, conduct investigations, hold hearings and have such studies made as will enable the commission to carry out the purposes of this Article and the Kentucky Civil Rights Act.

The Lexington-Fayette Urban County Human Rights Commission receives, initiates, investigates and resolves Complaints of discriminatory practices as defined by Title VII of the Civil Rights Act as amended (42 USC 2000(e)) by the E.E.O. Act of 1972, the Pregnancy Act of 1978, the Kentucky Civil Rights Act of 1966, the Lexington City anti-discrimination Ordinances and Fayette County anti-discrimination Resolutions, and Article 7.17 of the Lexington-Fayette Urban County Merger Charter.

Pursuant to the authority vested in the Lexington-Fayette Urban County Human Rights Commission by Code of Ordinance 2-31(3) the following RULES OF PRACTICE are adopted. Said Rules with any amendments or modifications thereto, shall be available to the public at the Offices of the Commission.

## 1.10 DEFINITIONS

when used in the Regulation, are:

1. "Act" shall mean the Kentucky Civil Rights Act of 1966, as amended, found in K.R.S. Chapter 344.
2. "Ordinance" shall refer to Local Ordinance 199-94 and 201-99.
3. "Commission" shall refer to the Lexington-Fayette Urban County Human Rights Commission.
4. "Chairperson" shall refer to the duly elected chairperson of the Lexington-Fayette Urban County Human Rights Commission, or in the event of his/her absence or inability to act in such capacity, then the Acting Chairperson, designated by the Chairperson to act in his/her place or stead.
5. "Hearing Commissioner" shall refer to the commissioner or hearing examiner designated by the Chairperson to conduct a public hearing; except that no commissioner who has served as a Commissioner/Conciliator may serve as a hearing commissioner for the same case.
6. "Hearing" shall refer to any public hearing of a case brought under the Act or Ordinance.
7. "Investigator" shall refer to any member of the Commission staff assigned by the Executive Director to investigate the allegations contained in a Complaint and to make a recommendation of whether there is probable cause to believe that the allegations are true; or any commissioner designated by the Chairperson to function in this capacity under these Rules.
8. "Person", "Commissioner", "Discrimination", "Employer", "Employee", "Employment Agency", "Real Estate Operator", "Real Estate Broker", "Real Estate Salesman", "Financial Institution", "Licensing Agency", "Labor Organization", and "place of accommodation, resort or amusement" shall have the same meaning ascribed for them in the Act and/or Ordinance.
9. "Proceedings" mean stage of the Human Rights Commission process from any failure of conciliation through appeal of, or action for enforcement of, an Order.
10. "Commissioner/Conciliator" shall refer to the commissioner designated by the Chairperson to serve on a monthly basis, whose duties shall be to re-investigate charges on appeal from Determination of No Cause, and to

serve as mediator or conciliator in those cases in which the parties indicate a desire to meet with a commissioner after a failure of conciliation at the staff level.

11. "Full Investigation" means an appropriate investigation conducted by the Commission staff where one can determine whether there is probable cause to believe that the local ordinance has been violated or that there is insufficient information to conclude that further investigation is not likely to result in a finding that there is probable cause to believe that the ordinance has been violated.

## SECTION II. PROCEDURE

### 2.010 COMPLAINT

#### 1. Who May File

- a. Any individual claiming to be aggrieved by any unlawful practice, may file with the Commission a verified Complaint.
- b. Upon receipt of a duly authorized and transmitted Complaint form the Equal Employment Opportunity Commission, the U.S. Department of Housing and Urban Development, or the Kentucky Commission on Human Rights, the Executive Director, acting in the name of the Commission, may issue a Complaint in writing, attaching and incorporating the transmitted materials.
- c. Any Commissioner, or the Urban County Commissioner of Law, or County Attorney, having reasonable cause to believe that a pattern or practice of discrimination exists, may file a verified Complaint.
- d. An individual claiming to be aggrieved and the Respondent have the responsibility to provide the Commission with notice of any change in address and with notice of any prolonged absence from that current address so that they can be located when necessary during the Commission's consideration of the complaint.

#### 2. Form

The Complaint shall be in writing and verified by Complainant before a Notary Public or other person duly authorized by law to administer oaths and take acknowledgments.

- a. The Complaint shall contain the following information:
  1. Full name and address of Complainant.
  2. Name and address of the person, employer, labor organization, employment agency, government agency, or place of public accommodation, resort or amusement, real estate operator, real estate salesman, financial institution or agency against whom the Complaint is made.
  3. The Ordinance or Resolution alleged to have been violated.

4. A short, plain and concise statement of the facts on which Complaint is based, including the date or dates of the alleged unlawful discriminatory practice, if known. If practice alleged is of a continuing nature, the dates between which it allegedly occurred.

3. Time of Filing

An aggrieved person may, not later than one (1) year after an alleged discriminatory housing practice has occurred or terminated, file a Complaint with the Commission alleging a discriminatory housing practice. A Complaint alleging discrimination with regard to employment or public accommodation must be filed within 180 days after the alleged unlawful act or practice. If the alleged practice is of a continuing nature, the date of the occurrence of said practice shall be deemed to be any date subsequent to the commencement of the practice up to and including the date on which the practice shall have ceased, or the date on which the Complaint shall have been filed if the unlawful practice continues.

4. Place of Filing and Service

- a. A Complaint shall be filed with the Commission by personal delivery or certified mail at the Commission Office, 342 Waller Ave., Suite 1A, Lexington, Kentucky 40504.
- b. Complaints shall be served within five (5) working days after filing of the Complaint at the Commission Offices and may be served on the Respondent by hand delivery or by certified mail and on a Corporate Respondent by the same method on its process agent or the managing agent of the local office of a corporation.

5. Amendment

The Executive Director, Commissioner assigned to case investigation, Presiding Hearing Commissioner, or the Complainant shall have the power reasonably and fairly to amend a Complaint.

- a. Amendments may include amendments to: cure any technical defects or omissions; amplify the allegations in the Complaint; or join additional or substitute respondents.
- b. The Complainant may amend the Complaint by right before any notice of the Complaint has been served on Respondent.



- c. The Commission staff or the assigned investigating Commissioner with the knowledge and the consent of the Complainant may amend the Complaint at any time prior to public hearing. In the event that a Notice of Hearing has been served on Respondent, Complainant or the Commission staff shall apply to the Chairperson or the Presiding Hearing Commissioner who may ex parte grant permission to amend. Notice of the Amended Complaint shall be served on Respondent in sufficient time to allow for the filing of an Amended Answer at least ten (10) days prior to the hearing date. Failure to grant such time will result in the granting of any request by Respondent for a continuance to submit an Amended Answer.
- d. The Presiding Hearing Commissioner or Presiding Hearing Examiner may amend the Complaint to conform with proof at any public hearing.

## 2.015 FILING AND TIME

### 1. Filing in General

All documents required to be filed under these Rules shall be filed by mail or by hand delivery at the Human Rights Commission office.

### 2. Evidence of Filing

Evidence of hand delivery shall be by receipt, and it shall be the responsibility of the party filing the documents to obtain such receipt.

### 3. Time Limitation

When those Rules require an act to be done within a time limitation following service or filing, service or notice of filing shall be by hand or by certified mail.

## 2.020 RESPONDENT'S STATEMENT OF POSITION

- 1. As part of the investigation, the Respondent shall file with the Commission a verified statement of position or evidence with respect to each and every allegation of the complaint. Said statement of position shall be filed with the Commission within twenty (20) days of the service of the complaint unless the complaint is a housing or public accommodation complaint, then said verified statement of position or evidence shall be filed with the Commission within ten (10) days.
- 2. A Respondent or his/her duly authorized agent or legal representative may petition the Commission for additional time in which to file a statement of

position or evidence and may further request of the Commission additional facts about the complaint in order to conduct an investigation into the complaint and file statement of position.

The Executive Director or his designee may grant such request to further the provisions of this section.

## 2.030 INVESTIGATION

### 1. Time

After the filing of a Complaint, the Executive Director shall designate an investigator from the Commission staff to direct the investigation of a case. The investigator(s) shall make a prompt and thorough investigation of the allegations of the Complaint.

### 2. Production of Evidence

- a. As part of the investigation, the Investigator may require all parties to attend a Fact-Finding Conference. The Fact Finding Conference is primarily for the purposes of:
  1. Identifying the issues in dispute;
  2. Ascertaining the positions of the parties;
  3. Resolving those issues that can be resolved;
  4. Obtaining evidence; and
  5. Determining the likelihood of a predetermination settlement
- b. An Investigator may, at any reasonable time, request access to premises, records, and documents relevant to investigation of the Complaint.
- c. If such request is denied, the Commission staff may apply for, and obtain, subpoena ad testificandum or duces tecum from the Fayette Circuit Court as provided in K.R.S. 344.320(2).
- d. If a person, Complainant, Respondent or any of its agents, or other witnesses fail to appear or permit access, examination, photographing or copying of any necessary documents, the Commission Attorney or Executive Director or Chairperson, may seek relief from the Fayette Circuit Court in an action to enforce such subpoena, or for an Order of Discovery requiring the person to permit same. In the event that such action is initiated in Circuit

Court, the appropriate Kentucky Rules of Civil Procedure for governing subpoenas and their enforcement of Order of Discovery shall be observed.

## 2.035 GUIDELINES ON FAIR HOUSING

1. Definitions
  - a. "Real estate operator" is defined in K.R.S. 344.010(8) and includes, subject to K.R.S. 344.362 and 344.365, any person engaging in housing practices or any real estate or real estate-related transaction and is not limited to those persons regularly engaging in real estate as a business.
  - b. "Conduct" means in addition to practices prohibited by K.R.S. 344.360 any action including statements, words, and utterances.
2. Discriminatory conduct notice, statements and advertisements shall include
  - a. A written or oral notice or statement by a real estate operator.
  - b. Written notice or statement including an application, flyer, brochure, deed, sign, banner, poster, billboard, or a document used with respect to the sale or rental of housing accommodations.
  - c. Notices, statements and advertisements include the following:
    1. The use of words, phrases, photographs, illustrations, symbols or forms which convey that housing accommodations are available or not available to a particular group of persons because of race, color, religion, sex, disability, familial status, or national origin;
    2. Expressing to agents, brokers, employees, prospective sellers or renters or any other persons a preference for or limitation on any purchaser or renter because of race, color, religion, sex, disability, familial status, or national origin;
    3. Selecting media or locations for advertising the sale or rental of housing accommodations which deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, disability, familial status, or national origin; and
    4. Refusing to publish advertising for the sale or rental of housing accommodations or requiring different charges or

terms for such advertising because of race, color, religion, sex, disability, familial status, or national origin.

- d. "Prohibited words, phrases, symbols, and visual aids" shall include those specified in 24 CFR 109.20(a) to (f).
  - e. Use of advertising media shall comply with provisions of 24 CFR 109.25(a) to (c).
  - f. Occupancy restrictions because of familial status.
    - 1. Real estate operators may enforce nondiscriminatory policies or standards involving reasonable occupancy restrictions on the basis of familial status.
    - 2. In reviewing occupancy restrictions, the Commission shall consider the:
      - a. Size of bedrooms and unit;
      - b. Age of children;
      - c. Configuration of unit; and
      - d. Other special circumstances which may warrant occupancy restrictions.
3. Material Incorporated by Reference.
- a. The following material is incorporated by reference:
    - 1. "Use of words, phrases, symbols, and visual aids, 24 CFR 109.20(a) to (f)", (54 Federal Register 3308, January 23, 1989, as amended at 44 FR 53294, December 20, 1990).
    - 2. "Selective Use of Advertising Media or Content, 24 CFR 109.25(a) to (c)", (54 Federal Register 3308, January 23, 1989 as amended at 55 FR 53294, December 28, 1990).
  - b. These materials may be inspected, copied, or obtained at the Offices of the Lexington-Fayette Urban County Human Rights Commission, 342 Waller Ave., Suite 1A, Lexington, KY 40504; or by calling
    - 1. (859) 252-4931;
    - 2. (859) 252-7057 (TDD), for the hearing impaired; or
    - 3. Kentucky Relay Service, (800) 648-6056 (TTD/TDD).

## 2.040 SATISFACTORY RESOLUTIONS

### 1. Defined

In the event that a disposition of a charge short of a Determination on the merits, is made by the Executive Director, (s)he will issue a Statement of Satisfactory Resolution, which shall take the place of Determination(s) of Probable Cause or No Cause. Satisfactory Resolutions shall be of two (2) kinds:

- a. If during the course of an investigation, but before a determination of Probable Cause or No Cause the parties desire to enter into an Agreement in satisfaction of the charge without a Determination on its merits, the Director shall review and, if the parties indicate satisfaction with the terms of the Agreement, and the terms are equitable, accept it by signature on the Agreement, and issue a Statement of Satisfactory Resolution. All such Negotiated Settlements shall be signed by both parties and witnessed. No such agreement shall be enforceable by Order of the Commission. In the event, however, that both Complainant and Respondent indicate their acceptance of the terms thereof, the Negotiated Settlement shall have the same status as other voluntary contracts.
- b. Upon written request by the Complainant prior to a Determination on the merits of the Complaint, stating good and proper reasons for such request a Complaint or any part thereof may be withdrawn upon acceptance by the Executive Director. Such Withdrawals shall be signed by the Complainant and witnessed. If the Withdrawal is found to be the free and voluntary act of the Complainant, the Director shall accept it by signature on the Withdrawal form and issue a Statement of Satisfactory Resolution.

## 2.050 DISMISSAL

1. The Executive Director or a Commissioner appointed under these Rules shall dismiss the complaint:
  - a. If it is determined that the Commission does not have jurisdiction over the complaint;
  - b. If it is determined after investigation that probable cause does not exist to believe that the alleged unlawful discriminatory practice has been committed;
  - c. If either the complainant or respondent cannot be located; provided that reasonable efforts have been made to locate the complainant

or respondent, or the complainant has not responded within thirty (30) days to a notice sent by the Commission to the complainant's last known address;

- d. If the complainant has failed or is unable to cooperate fully in the investigation or conciliation of a complaint by:
  - 1. Failing or refusing to provide the investigating examiner with requested information;
  - 2. Failing or refusing to appear or to be available for interview or conferences as an investigating examiner deems necessary; or
  - 3. Otherwise refusing or failing to cooperate, or not being able to provide information which a person would reasonably be expected to have to the extent that the Commission's Executive Director or investigating examiner is unable to resolve the complaint; provided that after due notice of the Commission's Executive Director's intent to dismiss the complaint, the complainant has had thirty (30) days in which to respond.
- e. If the Executive Director determines that there are inadequate remedies because:
  - 1. The respondent to the complaint has filed a petition for relief under Chapter VII of the Bankruptcy Code, Title 11 United States Code, and the Executive Director determines that there are insufficient assets available to provide relief to the complainant and other remedies are inappropriate; or
  - 2. There is no significant monetary, employment, accommodation, service, housing, declaratory, or injunctive relief available to the complainant;
- f. If the complaint has been investigated by an appropriate state or federal enforcement agency, such as the Kentucky Commission on Human Rights, Equal Employment Opportunity Commission, Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, or Office of Federal Contract Compliance Programs, and a final determination regarding the complaint has been made by the agency;
- g. If it is determined at any time that, based upon the Executive Director's discretion, dismissal is justified for administrative rea-

sons, such as, but not limited to:

1. A finding of probable cause is no longer appropriate because of a material change in the allegations of the complainant or respondent;
  2. A finding of probable cause is no longer appropriate because of a material change in the testimony of a key witness for the complainant or respondent; or
  3. A finding of probable cause is no longer appropriate because of a change in law or the discovery of new and material evidence; or
  4. If the complaint or relief sought is covered by a court order or consent decree, or the respondent action complained of is required or authorized by a court order or consent decree.
- h. The Executive Director may dismiss a complaint if the respondent has made a predetermination settlement offer which is in writing and specific in its terms, and the complainant refuses to accept the offer; provided that the offer, as determined by the Commission's Executive Director, would afford a just resolution for the harm alleged by the complainant and the complainant fails to accept the offer within thirty (30) days after actual notice of the offer.
- i. In the event of any dismissal of a complaint:
1. The complainant shall be notified by certified mail, return receipt requested, of:
    - a. The reason or reasons for dismissal;
    - b. The right to request in writing the commission to reconsider the dismissal within twenty (20) days after the filing of the dismissal.
  2. The respondent shall be notified in writing of the dismissal and the reasons therefor.
  3. The Commission may reconsider staff's recommendation of dismissal only when one or more of the following standards are met:
    - a. Misconduct by a Commission official, which may have affected the outcome of these proceedings;

- b. Substantial new and material evidence that was not previously considered and which may have affected the outcome of these proceedings; or
- c. An error in the interpretation of the law, which may have affected the outcome of these proceedings.

## 2.060 RECONSIDERATION

Upon filing of an application for reconsideration pursuant to Rule 2.050, the Dismissal shall be reviewed as follows:

1.
  - a. The Commission Chair shall, upon a specific written request by the Charging Party in compliance with Rule 2.050 for a reconsideration hearing, provide the Charging Party with an opportunity to present before the Commission such information as may be available to support the allegations in the reconsideration request. Such request may be accompanied by argument and supporting materials.
  - b. The Commission Chair shall designate a Commissioner or other representative of the Commission to review the evidence and shall make a report to the Commission Chair within thirty (30) days following their appointment of whether to enter an order of dismissal, an order finding probable cause, or an order of reinvestigation. Within ten (10) days following receipt of the recommendation, the Chair shall review said report, and if he/she agrees with the report, then he/she shall enter an appropriate order.
2. Any Order of Dismissal entered after an application for reconsideration, whether by reinvestigation or hearing, shall be without leave to reinstate.
3. If the Commission after reconsideration, determines that Probable Cause exists to support the allegations of the Complaint, except with regard to complaints alleging unlawful housing discrimination, the Commission shall immediately endeavor to eliminate the unlawful practice by conference, conciliation and persuasion.

## 2.070 FINDING OF PROBABLE CAUSE - EMPLOYMENT AND PUBLIC ACCOMMODATIONS

If the investigator determines, after investigation, that Probable Cause exists for crediting the allegations of the Complaint, (s)he shall report the recommendation of Probable Cause to the Executive Director, who, upon acceptance of the Recommendation, shall draft a Determination of Probable Cause. Such Deter-



mination shall be served on the Complainant and Respondent by mail or handing and such service shall be certified thereon by the Executive Director. Notice of all Probable Cause Determinations shall be reported to the Commission at least monthly, at the time of the regularly scheduled Commission meeting.

## 2.075 FINDING OF PROBABLE CAUSE - HOUSING DISCRIMINATION

The Commission staff shall determine, based on the facts, whether probable cause exists to believe that a discriminatory housing practice made unlawful under this ordinance has occurred or is about to occur. The Commission staff shall make the determination not later than the one hundredth day after the date a complaint is filed unless it is impracticable to make a determination or the Commission has approved a conciliation agreement relating to the discriminatory housing complaint. If it is impracticable to make the determination, the Commission shall notify the Complainant and Respondent in writing of the reasons for the delay.

If the Commission determines that probable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Commission shall immediately issue a charge on behalf of the aggrieved person for further proceeding under this ordinance. The charge shall include a concise statement of the facts upon which the Commission has found probable cause to believe that a discriminatory housing practice has occurred or is about to occur; shall be based on the final investigative report; and need not be limited to the facts or grounds alleged in the complaint.

If the Commission determines that no probable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Commission shall promptly dismiss the complaint.

When the Commission has issued a charge on behalf of an aggrieved person, a Complainant, a Respondent, or the aggrieved person on whose behalf the complaint is filed, may elect to have the claims asserted in that charge decided in a civil action under KRS Chapter 344, in lieu of an administrative hearing before the Commission. The election shall be made not later than twenty (20) days after the receipt by the electing person of service of the charge from the Commission or, in the case of the Commission, not later than twenty (20) days after service to the Respondent and Complainant. The person making the election shall give written notice of doing so to the Commission and to all other Complainants and Respondents to whom the charge relates.

## 2.080 CONFERENCE, CONCILIATION AND PERSUASION

### 1. Conciliation

- a. After a Determination of Probable Cause, the Director shall appoint

an Investigator or Conciliator to endeavor to eliminate the unlawful discriminatory practice by conference, conciliation and persuasion. The Investigator or Conciliator shall notify Respondent(s) that a particular meeting or conversation is for the purpose of attempting to conciliate the Complaint or case. Nothing said or done in the course of conciliation shall be made public or used as evidence in subsequent proceedings without the consent of the Respondent, Charging Party and the Commission.

- b. If a case subsequently goes to a hearing, no testimony shall be offered or received concerning any offers or counteroffers made in an effort to conciliate any alleged unlawful practice of discrimination for Complaint.
- c. In the event that the staff is unable to reach agreement by conciliation, Respondent and Complainant shall be advised in writing by the Executive Director, that they or the staff have the right to have conciliation efforts directed by the Commission. In that event, the Commissioner/Conciliator appointed on a monthly rotating basis by the Chairperson, shall meet with Complainant and Respondent separately or together in an effort to resolve the Complaint.

## 2. Conciliation Agreements

- a. If as a result of conference, conciliation and persuasion, the investigator/conciliator is able to provide for compliance and to effect the elimination of any unlawful practice or policy, and the Executive Director approves the form and content of the Agreement, a Conciliation Agreement shall be prepared by the staff setting forth all remedies and measures to be taken by all parties, including provisions for compliance reporting. The Conciliation Agreement shall be signed by the Complainant and Respondent and witnessed and shall be recommended to the Human Rights Commission by the signature of a Commission representative thereon.

### 2.085 ANSWER

#### 1. Who May File

The Respondent may, himself or herself, or through an attorney, answer the Complaint. The Answer shall be filed within a reasonable time after service of the Complaint, but no later than ten (10) days before the date set for a public hearing. No Answer shall be necessary unless the Complaint reaches the stage of "Proceedings" as defined in these Rules.

## 2. Content

- a. The Answer shall state in concise, plain terms, the defenses to each claim asserted in the Complaint, and shall admit or deny the allegations in the Complaint. If the Respondent is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations, the answer shall so state, and such statement shall have the force or effect of a denial. The Answer shall be signed and shall contain the post office address of the Respondent.
- b. Any allegation or new matter contained in the Answer shall be deemed to be denied without the necessity of filing of a Reply.
- c. Failure to admit or deny any allegation in the Complaint, unless the Respondent shall state in the Answer that he is without knowledge or information sufficient to form a belief, shall be deemed an admission of such allegation.

## 3. Place of Filing

The Answer may be filed at the Offices of the Human Rights Commission, by registered or certified mail, express delivery service or by hand delivery.

## 4. Amendment

- a. The Answer or any portion thereof may be amended: as a matter of right at any time before the hearing thereafter in the discretion of the Presiding Hearing Commissioner or Hearing Examiner on motion or application for such amendment. Filing of an Amended Answer shall be governed by the same rules as apply to the filing of an Answer.
- b. Upon the amendment of a Complaint, within such time period as may be fixed by the Presiding Hearing Commissioner (or Hearing Examiner) or the Chairperson.

## 5. Failure to File

- a. The Hearing Commissioner or Examiner may proceed, notwithstanding any failure of the Respondent to file an Answer within the time provided, to hold a hearing at the time and place provided in the Notice of Hearing and may receive evidence in support of the Complaint and enter its Order thereon.
- b. Upon application, the Chairperson or Presiding Hearing Commis-

sioner or Examiner may, for good cause shown, set aside any default in answering a Complaint, and proceed to hold a hearing at the time and place specified in the Notice of Hearing or at such later time as will eliminate any prejudice caused to the Complainant by the late filing of the Answer; and may permit the reception of evidence on behalf of the Respondent, including the examination and cross-examination of witnesses.

## 2.091 PRE-HEARING CONFERENCE

### 1. Purpose

In any proceeding, the Presiding Hearing Commissioner may, on his or her own Motion, or on Motion of any party of the action, direct the parties or their qualified representatives to appear at specified times and places for a Pre-Hearing Conference for the purpose of determining:

- a. The simplification of issues.
- b. The necessity of any amendments to the pleadings.
- c. The possibility of obtaining any stipulations, admissions of fact, and agreements concerning authenticity of documents to be introduced at the hearing.
- d. The identification of witnesses and any limitation on the number of expert witnesses to be called at the hearing.
- e. Such other matters as may aid in the disposition of the action.

### 2. Notice

If the Presiding Hearing Commissioner directs that the parties in the matter before the Commission shall appear at Pre-Hearing Conference, notice shall be given to all parties ten (10) days prior to the date set for such conferences. Said Notice shall contain the date, time and locations of such conferences. If the time or location of the Pre-Hearing Conference is such as to impose substantial hardship on a party, a verified Motion for Change with supporting reasons shall be filed by said party at least five (5) days prior to the scheduled conference. Upon a finding that Movant would suffer substantial hardship if the conference is not rescheduled, the Presiding Hearing Commissioner shall direct another conference date.

## 2.100 SETTING OF PUBLIC HEARING

1. When Hearing Ordered
  - a. After a finding by the staff or a Commissioner, of Probable Cause to credit the allegations of the Complaint, and in a case of failure to eliminate said unlawful discriminatory practice or otherwise resolve same by conciliation, conference and persuasion, the Executive Director shall report to the Chairperson of the Commission; or, if a Commissioner/Conciliator has also attempted, and failed to achieve resolution, she/he shall so report; at a regular monthly meeting of the Commission.
  - b. The Chairperson shall thereupon appoint a Presiding Hearing Commissioner or Hearing Examiner, and may, in his/her discretion, appoint one or more additional Hearing Commissioners. Those commissioners or examiners shall hear all motions, objections, or other communications from the staff or parties, at regularly scheduled times prior to the hearing of the case.
  - c. The date for a public hearing, and in the discretion of the Presiding Hearing Commissioner or Examiner, a Pre-Hearing Conference, may be set by either the Presiding Commissioner or Examiner, or the Chairperson, at any time after the Failure of Conciliation Notice is reported to the Commission but in no event shall the date for the Public Hearing be more than one hundred twenty (120) days from the issuance of the Probable Cause Determination or issuance of the discriminatory housing charge unless it is impractical to do so. If the Commission is unable to commence a hearing within one hundred twenty (120) days after issuance of the Probable Cause Determination or issuance of the discriminatory housing charge, the Commission shall notify the aggrieved person on whose behalf the charge was filed, and the Respondent, in writing the reasons for not doing so and provide a new date for the hearing.
  - d. Discovery under these proceedings shall be conducted a expeditiously and inexpensively as possible, consistent with the need of all parties to obtain relevant evidence.
  - e. A hearing under the Ordinance shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.
  - f. Motions for continuance of a hearing will be received from Complainant, Respondent or the Commission staff or their respective attorneys.

- g. In any administrative proceeding brought under applicable housing ordinance (See KRS 344.640 or 344.645), or any court proceeding arising therefrom, the Commission, upon application of either party, and in its discretion, may:
  - 1. Appoint an attorney for the person; or
  - 2. Award a reasonable attorney's fee and cost to the prevailing party to the same extent allowed in KRS 344.660 or both. The Commission shall not be liable in any event for fees or costs.
- 2. Notice of Hearing
  - a. Notice of Hearing shall state the time and place of hearing, identity of the Hearing Commissioner(s), and the Rules governing Answer and Default, in either verbatim or narrative form.
  - b. The Notice of Hearing shall be served by hand delivery or by mail, in the manner prescribed by the Notice provisions of the Kentucky Rules of Civil Procedure for motions (cf. K.R.C.P. 5.02). Service shall be at least twenty (20) days prior to the date of the hearing, unless such a period is waived by the parties in writing.

## 2.110 HEARINGS

### 1. Appearances

The Complainant or the Party on whose behalf the Complaint has been filed shall appear at the hearing. That party shall be represented by the Commission attorney, and may appear with or without his/her own counsel. The Respondent may appear at the hearing with or without counsel, and if an Answer has been filed or the Default in answering has been set aside for good cause shown, may examine and cross-examine witnesses and present evidence. The Complainant, the legal advisor to the Human Rights Commission or Hearing Examiner, and the Presiding Hearing Commissioner or Hearing Examiners, may examine witnesses.

### 2. Who Shall Conduct

Hearings shall be conducted before one or more properly sworn Hearing Commissioner or Hearing Examiners, to be appointed by the Chairperson. In the event more than one Hearing Examiner is appointed, the Chairperson shall designate one of the Hearing Commissioners to act as the Presiding Hearing Commissioner.

3. Power and Duties of Presiding Hearing Commissioner or Hearing Examiner

The Presiding Hearing Commissioner or Hearing Examiner shall have full authority to control the procedure of a hearing, within the limits of generally accepted administrative due process.

4. Procedure

- a. The hearings of the Commission shall be informal in nature, and may be continued from day to day, or adjourned to a later date or different place by announcement thereof at the hearing or by appropriate notice to all parties.
- b. All Commission Hearings shall be open to the public. The Commission may invoke the rule of separation of witnesses by motion of either party or at the discretion of the Hearing Examiner.
- c. The case in support of the Complainant shall be presented before the Hearing Commissioner or Hearing Examiner by the Commission Attorney or by a Staff Member. In the event that the Complainant has additional proof, then he/she or his/her attorney may also, with proper notice to the Respondent, present evidence in support of the Complainant and cross-examine witnesses.
- d. Evidence may be admitted if it is of the type commonly relied upon by a reasonably prudent person in the conduct of daily business. Strict rules of evidence shall not be enforced; but the rules of privilege applicable under state law shall be given full effect. Cumulative evidence may be limited at the discretion of the Hearing Commissioner or Examiner. The standard of proof shall be the preponderance of the evidence. The Kentucky Rules of Civil Procedure, insofar as they are not inconsistent or in conflict with the procedures and practices provided by this Ordinance, shall apply to the discovery of and presentation of evidence in the hearing as they would in a civil action in the Fayette Circuit Court.
- e. All testimony shall be given under oath or affirmation, and a record of testimony shall be made and preserved. The form of the record shall be in the sole discretion of the Human Rights Commission. Any party or attorney may record testimony at his or her expense. All exhibits introduced shall be preserved in the record.

## 2.120 HEARING EXAMINER'S REPORT

### 1. Report

- a. Each party may, at the discretion of the Hearing Commissioner or Examiner, submit proposed Findings of Fact and Conclusions of Law at the close of the evidence.
- b. Based upon the evidence adduced at hearing, the Hearing Commissioner or Hearing Examiner shall report to the Commission and shall recommend Findings of Fact and Conclusions of Law, and remedy, if appropriate. The Hearing Commissioner or Hearing Examiner shall make recommended findings of fact and conclusions of law within sixty (60) days after the end of the hearing unless it is impractical to do so. If the Hearing Commission or Hearing Examiner is unable to make a recommended findings of fact and conclusions of law within the sixty (60) day period, the Commission shall notify the aggrieved person on whose behalf the charge is filed, and the Respondent in writing, of the reasons for not doing so and provide a new date for issuance of the recommended decision.
- c. The report of the Hearing Commissioner or Hearing Examiner shall be served upon each party. Within ten (10) days after service of said report, parties shall file their objections, if any, to said report.

### 2. Issuance of Orders

On the basis of recommendations of the Hearing Commissioner or Hearing Examiner, the Commission shall adopt said findings and conclusion or make its own findings and conclusions, and shall issue an Order incorporating any and all appropriate relief.

### 3. Entry of Orders

All Orders of the Commission shall be entered in an Order Book, kept in the Commission offices for that purpose.

## 2.130 REVIEW AND ENFORCEMENT OF COMMISSION ORDERS

### 1. Judicial Review and Enforcement

Judicial review and enforcement proceedings shall be governed by the provisions of K.R.S. 344.240 and K.R.S. 344.340.



## 2. Certifying and Delivering the Record

Within thirty (30) days of the notice of filing of an appeal in Fayette Circuit Court, the Commission shall cause to be certified and deliver to the Clerk of the Fayette Circuit Court, the entire records of the proceedings before the Commission including the transcript or other reproduction of the hearing.

### 2.140 CONSTRUCTION OF THE RULES

#### 1. Rules and Regulations

These rules and regulations shall be liberally construed to effectuate the purposes and provisions of K.R.S. Chapter 344, Local Ordinance 199-94, as amended, and the policies of the Lexington-Fayette Urban County Human Rights Commission.

#### 2. Pleadings and Papers

All pleadings and papers allowed to be filed shall be liberally construed with a view to effect justice between the parties and the Commission staff, and the Commission and Hearing Commissioner or Hearing Examiner will, at every stage of the proceedings, disregard errors or defects in the pleadings or papers, or method of proceedings, which do not affect the substantial rights of the parties.

### 2.170 AMENDMENTS

New rules may be adopted and any rule may be amended or rescinded by the Commission at a regular or special meeting, provided that notice of the proposed adoption, amendment or revision has been given in writing to all members of the Commission at least ten (10) days before the meeting at which action is to be taken, except that the said ten (10) days notice shall not be required when two thirds of the membership of the Commission shall approve in writing such adoption, amendment or revision.

### 2.180 GENERAL INVESTIGATIONS

The Commission may, in its discretion, conduct such general investigation into the problems of discrimination as it deems necessary or desirable and may study and report upon the problems of the effect of discrimination on any field of human relationships.

APPROVED AS TO FORM AND LEGALITY:

/s/ William D. Wharton  
William D. Wharton, Executive Director

Adopted this 19th day of June 2000.

/s/ Joseph Johnikin  
Joseph Johnikin, Chairperson  
Lexington-Fayette Urban County  
Human Rights Commission

Attest: /s/ Carolyn Edwards  
Carolyn Edwards  
Commission Secretary