

**OFFICE OF HUMAN RIGHTS AND
COMMISSION ON HUMAN RIGHTS**

NOTICE OF FINAL RULEMAKING
69 D.C.R. 7170 (June 17, 2022)

The Director of the Office of Human Rights (OHR) and the Commission on Human Rights (Commission), pursuant to the authority set forth in Section 301(c) of the Human Rights Act of 1977 (“Human Rights Act”), effective December 13, 1977 (D.C. Law 2-38; D.C. Code § 2-1403.01(c)), jointly hereby give notice of the adoption of the following amendments to Section 408 (Representation) of Chapter 4 (Procedure for Contested Cases) of Title 4 (Human Rights and Relations) of the District of Columbia Municipal Regulations (DCMR).

Consistent with section 312(b) of the Human Rights Act (D.C. Code § 2-1403.12(b)), the final rulemaking clarifies that OHR’s role at the Commission is to present the case in support of the complaint in a manner consistent with the public interest, but that, in keeping with the statute, OHR does not represent the complainant’s individual interests in the proceedings. The amendment also provides that the pursuit of the public interest may include seeking appropriate relief for the complainant and other remedies consistent with the public interest, but that OHR does not represent the complainant or the respondent. The final rule makes other changes with respect to private attorneys entering an appearance to represent a complainant.

The Commission and the Director jointly issued emergency and proposed rules on February 16, 2022, which became effective March 4, 2022, when published in the *District of Columbia Register* at 69 DCR 001730. The Commission and the Director did not receive any comments during the comment period. Notwithstanding, changes were made to Section 408.5(h)(1) and (2) to clarify how the “non-attorney representative” represents their bar status and scope of practice that is consistent with D.C. Court of Appeals Rule 49 (Unauthorized Practice of Law).

The Commission (through its Rules Committee) and the Director jointly took final action to adopt this rule on June 8, 2022. The rules shall take effect on the date of publication of this notice in the *District of Columbia Register* and shall supersede the emergency rules published in the *District of Columbia Register* at 69 DCR 001730.

Section 408, REPRESENTATION, of Chapter 4 (PROCEDURE FOR CONTESTED CASES), of Title 4, HUMAN RIGHTS AND RELATIONS, of the DCMR is amended to read as follows:

408 REPRESENTATION

408.1 In each proceeding before the Commission, the General Counsel for the Office of Human Rights or his or her designee shall present the case in support of the complaint and may pursue public interest relief and appropriate relief for the complainant, to the extent consistent with the public interest, but the Office shall not represent the complainant or the respondent.

408.2 Any complainant or respondent may represent themselves or retain an attorney or non-attorney representative, at their own expense, to proceed before the Commission.

408.3 An attorney representing a complainant or respondent must be:

- (a) An active member in good standing of the District of Columbia Bar;
- (b) Authorized to practice law in the District of Columbia pursuant to Rules 49(c)(1), (4), (8), or (9) of the District of Columbia Court of Appeals; or
- (c) Authorized under this section to appear *pro hac vice*.

408.4 To represent a complainant or respondent *pro hac vice* before the Commission, an attorney shall file an application with the Commission in which the attorney declares under the penalty of perjury:

- (a) I have not applied for admission *pro hac vice* in more than five (5) cases at the Commission or in the courts of the District of Columbia during this calendar year. I have applied for admission *pro hac vice* at the Commission and in the courts of the District of Columbia _____(list number) times previously in this calendar year;
- (b) I am a member in good standing of the bar of the highest court(s) of the State(s) of _____ (list all states);
- (c) There are no disciplinary complaints pending against me for violation of the rules of the courts of those states;
- (d) I am not currently suspended or disbarred from practice in any court;
- (e) I do not practice or hold out to practice law in the District of Columbia;
- (f) If I am a District of Columbia government employee, I am allowed to appear on behalf of my client because I meet the conditions set forth in 6B DCMR § 1807.6 or 1807.7;
- (g) I am familiar with the rules governing proceedings before the Commission;
- (h) I am applying for admission *pro hac vice* for the following reason(s): _____ (list all reasons);
- (i) I acknowledge the jurisdiction of the Commission and the courts of the District of Columbia over my professional conduct and agree to be bound

by the District of Columbia Rules of Professional Conduct, in this matter, if I am admitted *pro hac vice*;

- (j) I have informed my client that I am not a member of the District of Columbia Bar, and my client has consented to my representation in this case; and
- (k) Either:
 - (1) If I have an office in the District of Columbia, I will expressly give prominent notice in all business documents related to any Commission proceeding of my bar status and that my practice is limited consistent with Rule 49(c) of the Rules of the D.C. Court of Appeals; or
 - (2) If I do not have an office in the District of Columbia, I will expressly give written notice to clients and other parties, with respect to any proceeding before the Commission, of my bar status and that my practice is limited consistent with Rule 49(c) of the Rules of the D.C. Court of Appeals.

408.5

To represent a complainant or respondent as a non-attorney representative before the Commission, the representative shall file an application with the Commission in which the representative declares under the penalty of perjury:

- (a) I have not applied to be a representative in more than five (5) cases before the Commission during this calendar year. I have applied to be a representative before the Commission _____ (list number) times previously in this calendar year;
- (b) I do not practice or hold out to practice law in the District of Columbia;
- (c) If I am a District of Columbia government employee, I am allowed to appear on behalf of my client because I meet the conditions set forth in 6B DCMR § 1807.6 or 1807.7;
- (d) I am familiar with the rules governing proceedings before the Commission;
- (e) I am applying to be a representative before the Commission for the following reason(s): _____ (list all reasons);
- (f) I acknowledge the jurisdiction of the Commission and the courts of the District of Columbia over my professional conduct and agree to be bound by the District of Columbia Rules of Professional Conduct in this matter;

- (g) I have informed my client that I am not a member of the District of Columbia Bar, and my client has consented to my representation in this case; and
- (h) Either:
 - (1) If I have an office in the District of Columbia, I will expressly give prominent notice in all business documents related to any Commission proceeding that I am a non-attorney representative, and that my representation is limited consistent with Rule 49(c) of the Rules of the D.C. Court of Appeals; or
 - (2) If I do not have an office in the District of Columbia, I will expressly give written notice to clients and other parties, with respect to any proceeding before the Commission and any conduct reasonably ancillary to the proceeding, that I am a non-attorney representative and that my representation is limited consistent with Rule 49(c) of the Rules of the D.C. Court of Appeals.

408.6 The administrative law judge to whom a case has been assigned may approve an application submitted pursuant to § 408.4 or 408.5, based on the attorney or representative's self-certification that all criteria have been satisfied.

408.7 Each representative of the complainant or the respondent, whether an attorney or a non-attorney, must submit a notice of appearance in order to participate in the proceeding. The notice of appearance shall be in writing and shall include the representative's bar number, if applicable, address, telephone number, and email address. The notice of appearance shall include a statement that the representative possesses:

- (a) Working knowledge of the Human Rights Act and any other relevant District law at issue, the applicable District of Columbia Municipal Regulations, the District of Columbia Administrative Procedure Act, District of Columbia Superior Court Rules of Civil Procedure, and this chapter; and
- (b) Familiarity with the facts, legal theories, and issues in question.

408.8 Once a representative for the complainant or respondent has entered his or her appearance in a case, the representative may not withdraw from the case without approval of the hearing examiner. The hearing examiner may use his or her discretion in granting a motion to withdraw submitted by a representative of the complainant or respondent, except that no motion to withdraw shall be granted once the hearing has commenced, or within thirty (30) days before the scheduled commencement of the hearing, unless good cause is shown.

