



A Guide to the D.C. Commission on Human Rights' Adjudication Process

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I. Introduction

The purpose of this pamphlet is to provide litigants before the D.C. Commission on Human Rights (“Commission”) with a basic overview on how the Commission adjudicates cases filed under the D.C. Human Rights Act (“DCHRA”).

The Commission’s adjudication process is in many ways similar to the process found in D.C. Superior Court or Federal District Court, but in several important ways it is different.

The Commission is an independent agency within the Office of Human Rights (“OHR”) and it adjudicates private sector discrimination complaints certified by OHR.

The Commission is comprised of fifteen (15) Commissioners who are appointed by the Mayor and confirmed by the City Council for three-year terms. The Commission also employs full-time Administrative Law Judges (“ALJ”).

II. Commission Regulations

The regulations that govern Commission proceedings are the D.C. Administrative Procedure Act, *Rules of Procedure for Contested Cases*, 4 DCMR § 400 *et seq.* and *Guidelines for Payment of Compensatory Damages, Civil Penalties, and Attorney’s Fees*, 4 DCMR § 200 *et seq.* When a situation is not covered by one of the Commission’s procedural rules or guidance is needed beyond those rules the Commission looks to the D.C. Superior Court rules.

If your case is an employment discrimination case against the D.C. Government that a Commission ALJ has been appointed to handle, the primary regulations governing your case are located in *Complaints of Discrimination in the District of Columbia Government*, 4 DMCR § 100 *et seq.*

4 DCMR § 300 *et seq.* covers matters pertaining to the Commission’s bi-monthly meetings, Commission officers’ duties and responsibilities, and Commission officer election procedure.

Commission regulations may be found on our website at www.ohr.dc.gov/commission. Those same regulations and others may be found at the Secretary of the District of Columbia’s D.C. Municipal Regulations and Register website at <http://www.dcregs.dc.gov/>. The list of regulations available on that site is searchable by agency; the Commission’s regulations are listed alongside the regulations for OHR.

III. Certification of the Complaint to the Commission

Cases come to the Commission when OHR conducts an investigation and makes a finding of probable cause on one or more alleged violations of someone’s rights under the DCHRA and other laws under the Commission’s jurisdiction. After an attempt by OHR to settle the case fails, the case is certified to the Commission for public hearing.¹

Once a case is certified to the Commission, litigants will receive a notice stating that:

- A. The Commission now has jurisdiction of the complaint;
- B. The Commission will assign an ALJ to your case; and,
- C. If you do not have an attorney, a complainant is entitled under the DCHRA to representation from OHR.²

Proceedings before the Commission are a trial *de novo*, or a “new trial.” All of the information gathered in making OHR’s letter of determination is not used by the Commission, unless it is introduced into evidence by a party.

¹ For cases involving an allegation of employment discrimination by a District Government employee, the Director of the OHR is the official who decides the merits of the case, although the case may be referred to a Commission ALJ to recommend a resolution to the Director.

² In cases of employment discrimination involving District Government employees a complainant is not entitled to representation from OHR.

IV. Status Conference

Within thirty (30) days of certification to the Commission, you will receive a Scheduling Conference Notice from your assigned ALJ.

The Scheduling Conference usually lasts less than one-half (1/2) hour.³ At the Scheduling Conference, you and the opposing party will meet with the ALJ to discuss the following:

- a. The ALJ's preferred procedures;
- b. The status of settlement discussions;
- c. The deadlines for completing discovery;
- d. The deadlines for filing dispositive motions;
- e. The date for filing pre-hearing statement;
- f. The date for pre-hearing conference;
- g. The date for the evidentiary hearing; and,
- h. The procedure at the evidentiary hearing.

At the Scheduling Conference, the ALJ will discuss § 417 automatic disclosures which are due thirty (30) days after the status conference. Section 417 requires both parties to provide each other with a list of witnesses who have information and a list of exhibits that are relevant. Section 417 can be found in the D.C. Municipal Regulations at the links provided earlier or at the following public Google-shortened url:
<http://goo.gl/6il75c>.

At the Scheduling Conference, the ALJ will also go over the process for requesting subpoenas, if needed. The Commission is authorized to issue *subpoenas ad testificandum* (ordering the recipient to appear and give oral

³ In order to save time and reduce the cost and inconvenience of hearings and conference, where possible and appropriate, hearings and conferences will be held via telephone conference.

testimony) and *subpoenas duces tecum* (ordering the recipient to produce documents or other tangible evidence).

Within five (5) days of the Scheduling Conference, the ALJ will issue a Scheduling Order that outlines the deadlines and dates discussed at the Conference.

V. Discovery

In addition to exchanging information with the opposing party through the § 417 automatic disclosure, parties have an opportunity to engage in civil discovery. Discovery is the pre-trial phase in a lawsuit in which each party can obtain relevant information from the opposing party by means of various discovery devices.

The Commission allows the following types of discovery devices:

- a. Depositions;
- b. Interrogatories;
- c. Requests for production of documents;
- d. Requests for permission to enter premises;
- e. Requests for physical or mental examination by a qualified practitioner; and,
- f. Requests for admissions.

When discovery requests are objected to by a party, the requesting party may file a motion to compel discovery.

The ALJ generally allows up to three months (3) to complete discovery. If a party seeks an enlargement of time, that party must file a motion requesting additional time for discovery and state the reason(s), with specificity, why additional time is needed. The Commission requires that any motion to compel or for additional time must be discussed with the other side before it can be submitted.

VI. Motions at the Commission

All motions submitted to the Commission must be done as a written motion (not an email or letter) and filed with the ALJ; this includes requests for

extensions of time. The Commission requires that the parties discuss any issue that is about to be brought up in a motion and seek to resolve it before filing a motion, with the exception of dispositive motions. The Commission specifically requires discussion of motions for extensions and motions to compel. You should include in your motion that you have met this requirement.

After any motion is filed the other party has fifteen (15) days to respond unless additional time is provided. Additional responses are only available by request to the ALJ on your case. After a response to a motion has been filed the ALJ will decide the motion usually within thirty (30) days or less.

Dispositive Motions

A party may file a dispositive motion, normally known as a motion to dismiss or a motion for summary judgment. Such a motion can end the case. A successful motion to dismiss challenges an issue such as the jurisdiction of the Commission, without necessarily addressing the underlying claims. A motion for summary judgment is filed by a party who believes that there is no genuine issue of material fact in dispute and the party is entitled to prevail as a matter of law. The motion, in effect, says the important facts are clear and I should win.

If the Commission denies a dispositive motion, then the adjudication process will proceed toward an evidentiary hearing. If the Commission grants the dispositive motion, the adjudication of your case ends.

VII. Pre-Hearing Statements

After the parties complete discovery and the Commission denies any dispositive motions filed, the parties are required, pursuant to 4 DCMR § 413.3, to file a pre-hearing statement. The Commission requires the parties to work together and file the statement jointly.

Each pre-hearing statement should contain the following:

- a. A short and precise statement of the factual and legal issues that are to be adjudicated before the Commission;

- b. A list of all witnesses, their approximate length of testimony, a short explanation of how that testimony is relevant, and any stipulation or objection regarding the witness;
- c. A list of all exhibits to be offered, a short statement of how that evidence is relevant, and any stipulation or objection regarding the evidence;
- d. A list of all agreed to stipulations; and,
- e. The Complainant must also prepare a statement of remedies sought from the Commission.

VIII. Pre-Hearing Conference

Pursuant to 4 DCMR § 413, all parties and representatives must attend a pre-hearing conference.

The pre-hearing conference is scheduled after the filing of the pre-hearing statements. It usually takes approximately two (2) hours to conduct, but could take more or less time depending on the specifics of your case.

At the pre-hearing conference, the ALJ and the parties will discuss the following:

- a. The possibility of a settlement agreement;
- b. The possibility of stipulating to facts in order to narrow the issues and shorten the length of the evidentiary hearing;
- c. The relevance of witnesses listed in the pre-hearing statements and any objections to the witness;
- d. The relevance of exhibits listed in the pre-hearing statements and any objections to the exhibits;
- e. Any last minute motions; and
- f. An overview of the evidentiary hearing process.

IX. Evidentiary Hearing

No more than one month after the pre-hearing conference, the ALJ will preside over an evidentiary hearing. Depending on the complexity and the number of witness in the case, the evidentiary hearing may last from a few hours to a few days. The evidentiary hearing is a “trial-type setting” with testimony given by witnesses under oath, subject to cross-examination, and the admission of relevant documents and other tangible exhibits.

The D.C. Superior Court or Federal Rules of Evidence are not strictly followed at the evidentiary hearing. However, the rules provide guidance about evidentiary and procedural matters. The goal is to give the parties a fair chance to present their respective cases and not to get sidetracked by evidentiary-procedural maneuvering.

A court reporter will transcribe the hearing. Parties may obtain copies of the transcript from the court reporter service or view the Commission’s copy.

The order of the evidentiary hearing is as follows:

- a. Opening statement by the ALJ;
- b. Opening statement by complainant’s counsel (optional);
- c. Opening statement by respondent’s counsel (optional here or at beginning at their case-in-chief);
- d. Complainant’s case-in-chief;
- e. Respondent may request a directed verdict for failure to establish a case of discrimination (optional);
- f. Respondent’s case-in-chief;
- g. Complainant’s rebuttal case (optional);
- h. Respondent’s surrebuttal case (optional);

- i. Closing arguments (optional).

X. Post-Hearing Briefs

At the conclusion of the evidentiary hearing, the ALJ will issue an Order that governs the filing of post-hearing briefs. Depending on the complexity and size of the case, these briefs are typically due between thirty (30) and sixty (60) days from the date the court reporter provides the transcripts to the Commission and/or parties.

All post-hearing briefs should contain the following:

- a. Proposed findings of facts that you want the ALJ to consider; and
- b. Proposed conclusions of law with legal analysis that you want the ALJ to consider.

The parties will have fifteen (15) days to file a response to the opposing parties' post-hearing brief.

XI. Proposed Decision and Order

After the ALJ receives the post-hearing briefs and responses, the ALJ will review the transcript, exhibits, and post-hearing briefs and responses. The ALJ will then write a proposed decision and order and provide a copy to the parties.

The proposed decision and order contains the ALJ's proposed findings of fact, proposed conclusions of law, and a recommended order including any remedies.

The ALJ's proposed decision and order is essentially a recommendation to the Commission Tribunal on how they should decide the case.

XII. Filing Exceptions to the ALJ's Proposed Decision and Order

Within fifteen (15) days of the issuance of the ALJ's proposed decision and order, each party may file exceptions.

An exception can be filed either for an ALJ's finding of fact or a conclusion of law. For example, a party may argue that a proposed finding of fact is not supported by the record or that the ALJ failed to consider a material fact when reaching a decision. Similarly, a party may point out that a conclusion of law is flawed or it does not rationally flow from the findings of fact. It is important if you file exceptions that you include your full reasoning and citations to the record and/or case law.

The opposing party will have ten (10) days to file a response to a party's exception.

XIII. Commission Tribunal's Final Decision and Order

Once the parties' exceptions to the proposed decision and order are answered by the ALJ and the ALJ modifies the decision and order, if needed, it is transmitted to a Commissioner Tribunal along with the rest of the administrative record. The administrative record includes the verbatim hearing transcript, exhibits, the ALJ's proposed decision and order, the post-hearing briefs, and any exceptions filed by the parties.

The Commission Tribunal is assigned to the case by the Chairperson of the Commission and is ultimately responsible for rendering the final decision and order.

In a closed meeting, the Commission Tribunal will meet with the ALJ and deliberate the merits of the case. The Commission Tribunal will determine whether to accept, reject, or modify the ALJ's proposed decision and order.

If the Commission Tribunal accepts the ALJ's proposed decision and order, the Commission Tribunal will sign the final decision and order and issue it to the parties. If the Commission Tribunal modifies or rejects the ALJ's

proposed decision and order, they will oversee the revision of the decision, sign it, and then issue it to the parties.

XIV. Motion for Reconsideration and Appeal Rights

Any party who is aggrieved by the final decision and order has the following options:

- a. File a motion for reconsideration with the Commission requesting it to reconsider its ruling pursuant to 4 DCMR § 431.1. This motion must be filed within fifteen (15) days of the issuance of the final decision and order. Motions for reconsiderations must be based on one of the following:
 - i. The discovery of competent, relevant, and material evidence that was not reasonably discoverable during the course of the hearing process;
 - ii. A failure of the Commission Tribunal to consider particular items of competent, relevant, and material evidence that were admitted into the record of the hearing process; or
 - iii. A failure of the ALJ to admit into the record competent, relevant, and material evidence that was proffered during the hearing process.
- b. File a petition for review with the D.C. Court of Appeals within thirty (30) days of the receiving the Commission Tribunal's final decision and order.

IMPORTANT: YOU DO NOT HAVE TO FILE A MOTION FOR RECONSIDERATION BEFORE FILING A PETITION FOR REVIEW AT THE D.C. COURT OF APPEALS.

XV. Damage Awards and Attorney's fees

The Commission adjudicates cases in four areas of civil life—housing, employment, public accommodation, and educational institutions. The Commission also adjudicates claims by D.C. Government employees and claims under other acts that have assigned jurisdiction to the Commission such as the Criminal Background Checks for the Protection of Children Act of 2004. The damage scheme and whether damages are available at all differs depending on the type of case.

Generally, in cases involving private parties proceeding under the DCHRA, upon a finding of discrimination, the Commission seeks to put the complainant in the same position they would have been had the discrimination not occurred. Damages may include issuing injunctive relief, affirmative action, monetary damage awards, compensatory damages, and civil penalties.

In DCHRA cases a successful private complainant may also be able to seek attorney fees from a respondent. The attorney fee petition must be filed by the 30th day after receiving the final decision and order.

The remedies for District Government employees in employment discrimination cases are more limited, and among other things, do not include the right to seek attorney fees.

The Commission's regulations pertaining to damages in DCHRA cases is found in the *Guidelines for Payment of Compensatory Damages, Civil Penalties, And Attorney's Fees*, 4 DCMR § 200 *et seq.*