

District of Columbia Office of Human Rights

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Standard Operating Procedures for Complaint Processing

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INTRODUCTION

The District of Columbia Office of Human Rights (OHR or Office) was established to increase equal opportunity and protect human rights for persons who live in or visit the District of Columbia. The agency enforces local and federal human rights laws by providing a legal administrative process to District residents as well as those visiting and/or doing business in the District who believe they have been subjected to discrimination. This Case Processing Procedure blueprint is designed to inform the public about the investigation process at OHR, how to file a complaint with OHR and what to expect at each step of the process. This document was developed based on regulations implementing the District of Columbia Human Rights Act¹.

SECTION I: GENERAL OVERVIEW OF THE OHR INVESTIGATION PROCESS²

This Section will provide a brief overview of the seven (7) case processing stages at OHR, which are as follows:

- A. Complaint Filing & Intake
- B. Mandatory Mediation
- C. Full Investigation
- D. Probable Cause Determination
- E. Conciliation/Hearing
- F. Post Conciliation/Hearing
- G. Appeal

- A. COMPLAINT FILING & INTAKE:** In order to file a complaint with the Office of Human Rights, individuals or parties representing individuals (“complainant”) must first complete and submit an initial complaint called, “Complaint Questionnaire.” The questionnaire requires relevant information about the complaint and is available online. Paper copies are also available at the Office of Human Rights. If, based on the information provided in the Complaint Questionnaire, OHR determines it has jurisdiction, the complainant will be scheduled for an “intake interview.” In some cases, OHR may conduct a preliminary intake interview by phone with a complainant to gather additional information about a potential complaint. After the intake interview or other contact with the complainant, if OHR finds there is sufficient information to docket a Charge of Discrimination (“Charge”), OHR will draft the Charge and require the complainant to verify and sign the Charge. Once the Charge is signed and notarized, a docket number will be assigned for case processing.
- B. MANDATORY MEDIATION:** After a Charge of Discrimination is docketed, OHR will schedule the parties for mediation. Mediation is required under the Human Rights Act. If the parties reach an agreement during mediation, OHR will close the case. In the event no settlement agreement is reached, OHR will launch a full investigation of the Charge.

1 See 4 DCMR §§ 100 et seq., 700 et seq.

2 For more specific details on filing an employment complaint against the District government, see 4 DCMR § 100 et seq.

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- C. FULL INVESTIGATION:** The purpose of investigation is to determine whether there is probable cause to believe a discriminatory conduct may have occurred. During investigation, OHR will request documents, interview witnesses, and where appropriate, hold a fact-finding conference.
- D. PROBABLE CAUSE DETERMINATION:** Once the investigation is completed, OHR will issue a “Letter of Determination” (LOD) outlining OHR’s findings (either probable cause OR no probable cause).³
- 1. PROBABLE CAUSE FINDING:** If OHR finds probable cause to believe discriminatory conduct may have occurred on any of complainants’ claims, the parties will be required to undergo “conciliation” in order to attempt resolution of the matter. If conciliation fails, the parties will proceed to a formal hearing. Prior to conciliation, the respondent may file a Request for Reconsideration of the probable cause finding.
 - 2. NO PROBABLE CAUSE FINDING:** If OHR determines that there is no probable cause, the following three options are available to the complainant:
 - a. File a Request for Reconsideration of OHR's determination (*If the request is denied, the complainant may file a Petition for Review with the D.C. Superior Court*);
 - b. File a Substantial Weight Review with the EEOC if the matter involves EEOC subject matter jurisdiction; or
 - c. File a Petition for Review with the D.C. Superior Court.
- E. CONCILIATION:** If OHR determines that there is probable cause, OHR will schedule the parties for mandatory conciliation. If the parties reach an agreement during conciliation, OHR will close the case.
- F. FORMAL HEARING:** If conciliation does not result in a final settlement agreement, the parties will proceed to a formal hearing. In matters against private employers (non-government), the parties will proceed to a public hearing on the merits before the D.C. Commission on Human Rights (Commission). In matters against the District of Columbia government, the parties will proceed to a hearing before an independent hearing examiner who will either conduct a hearing or issue a summary determination, after which the Director of the Office of Human Rights will make a final determination. In complaints involving claims under the D.C. Family and Medical Leave Act, the parties will proceed to a hearing (on those claims) before an independent hearing examiner, after which the Director of the Office of Human Rights will make a final determination.
- G. APPEAL:** For private matters, either party may appeal a decision of the Commission on Human Rights to the D.C. Court of Appeals. For government matters, either party may appeal an OHR decision to the D.C. Superior Court.

³ OHR may also issue a “split finding” determination where OHR finds probable cause to believe that discriminatory conduct may have occurred with respect to some complainants’ claims, and no probable cause on others.

SECTION II: THE INTAKE PROCESS

This Section will provide guidance on OHR Complaint Questionnaire Forms, how to file a complaint, and what to expect during the intake process at OHR.

- A. COMPLAINT QUESTIONNAIRE FORMS:** OHR Complaint Questionnaires are forms used to file an initial complaint of discrimination. The forms are available online and in person at the Office of Human Rights in multiple languages and for various types of complaints, including the following:
- 1. General Employment Discrimination Complaint Questionnaire:** This form is used for filing complaints of discrimination in the workplace. This form may be used by private and government job applicants, current employees, and terminated employees. This form can be used for allegations of general employment discrimination and retaliation protected under the Human Rights Act, and for violations under the D.C. Family and Medical Leave Act.
 - 2. Fair Criminal Record Screening Complaint Questionnaire (Ban the Box in Employment):** This form is used for filing complaints of violation under the Fair Criminal Record Screening Amendment Act (FCRSA) by individuals who were unlawfully subjected to criminal background inquiries. These complaints can take two forms:
 - a. Type A:** This form is used by job applicants who attempted to apply for a job and encountered an employment application containing criminal background question(s) prior to a conditional offer of employment; or
 - b. Type B:** This form is used if: (i) criminal background inquiries were made during the interview process; (ii) a conditional offer of employment was revoked; or (iii) adverse employment action was taken as a result of a criminal conviction.
 - 3. Unemployed Anti-Discrimination Complaint Questionnaire:** This form is used for filing complaints of violation under the Unemployed Anti-Discrimination Act which prohibits an employer from failing or refusing to consider an individual for employment because the individual was unemployed at the time they sought employment.
 - 4. Pregnant Workers Complaint Questionnaire:** This form is used for filing complaints of violation under the Protecting Pregnant Workers Fairness Act, which prohibits discrimination based on one's pregnancy status or related medical condition. Additionally, the Act places an affirmative obligation on employers to provide reasonable accommodations.
 - 5. Fair Criminal Record Screening for Housing Complaint Questionnaire:** This form is used for filing complaints of violation under the Fair Criminal Record Screening for Housing Act by individuals who were: (1) unlawfully subjected to criminal background inquiries while applying for housing; (2) not provided with notices required by the law; and (3) unlawfully denied housing.
 - 6. Fair Credit Employment Complaint Questionnaire:** This form is used for filing complaints of violation under the Fair Credit in Employment Amendment Act by individuals who were unlawfully required to submit credit information to a current or potential employer or by individuals who suffered adverse employment action as a result of their credit information.

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4. **Housing/Commercial Space Complaint Questionnaire:** This form is used for filing complaints of discrimination in housing (rentals or purchases) and in commercial space (business rentals or purchases) based upon one or more protected traits under the Human Rights Act.
 5. **Public Accommodations Complaint Questionnaire:** This form is used for filing complaints of discrimination in public places, such as denial of service at a restaurant or at a retail store. The alleged discrimination must be based upon one or more protected traits under the Human Rights Act.
 6. **Educational Institution Complaint Questionnaire:** This form is used for filing complaints of discrimination in educational institutions (grade schools, high schools, colleges, universities, trade schools, etc.) based upon one or more protected traits under the Human Rights Act.
 7. **Language Access Violation Complaint Questionnaire Form:** This form is used to for filing complaints of violations under the D.C. Language Access Act of 2004.

B. FILING COMPLAINT QUESTIONNAIRE

1. **Statute of Limitations:** All complaints must be filed with the Office of Human Rights **within one year** of the alleged discriminatory conduct or discovery thereof. EXCEPTIONS include:
 - a. Employment Discrimination Claims against the District: Allegations of employment discrimination claims against the District of Columbia government must be reported to a certified EEO Counselor **within 180 days** of the alleged discriminatory conduct or discovery thereof. See subsection (4) below for more information on cases against the District.

2. **Date of Filing:** For purposes of determining timeliness of filing, the date of filing of the initial complaint using OHR's Complaint Questionnaire, whether online, via fax or in-person, will constitute the filing date.

3. **Required Information in Initial Complaints:** Initial complaints alleging discrimination **MUST** contain the information outlined below. Failure to provide complete information on the Complaint Questionnaire may result in dismissal of the complaint.
 - a. Full name and address of the complainant;
 - b. Full name and address of the respondent;
 - c. A statement explaining the alleged discrimination with description of who, what, when, and how the alleged discrimination occurred;
 - d. The date(s) of the alleged discrimination;
 - e. If the alleged discrimination is continuing in nature, range of dates when alleged discrimination took place; AND
 - f. A statement as to whether the complainant has filed any other action, civil, criminal, or administrative in nature, including complaints filed with the U.S. Equal Employment Opportunity Commission (EEOC), complaints with other District administrative agencies such as the Office of Administrative Hearings and Department of Employment Services, and complaints filed in D.C. Superior Court.

4. **Complaints against the District Government:** Before filing an employment discrimination claim against the District at the Office of Human Rights, the complainant must first attempt to resolve the claim by reporting it to a certified EEO Counselor within 180 days of the alleged discriminatory conduct or discovery thereof.⁴ Once the complainant has participated in the EEO counseling process, the Counselor will issue an Exit Letter, a copy of which the complainant must bring to OHR when filing the initial complaint. OHR only has jurisdiction over claims where complainants have complied with the EEO Counseling process. OHR will accept proof of attempt(s) to obtain the exit letter if the EEO Counselor has not issued the Exit Letter within 30 days of the initial interview.

⁴ See 4 DCMR § 105 (2010); D.C. Government EEO Case Review Manual.

EXCEPTION: Sexual harassment and DC FMLA complaints do not require an Exit Letter or consultation with an EEO Counselor. If a complainant has multiple claims, any claim other than the sexual harassment or DCFMLA claims must still go through EEO Counseling. For example, if a complainant has a sexual harassment claim and a race discrimination claim, the race discrimination claim must be reported to a certified EEO Counselor for resolution before it can be brought to OHR, unless the claim is based on the same facts as the sexual harassment claim and involves the same supervisor. Notwithstanding, OHR shall make decisions on a case by case basis consistent with its authority.

C. COMPLAINT QUESTIONNAIRE REVIEW: Once OHR receives the Complaint Questionnaire, an Intake Officer will review the information provided within five (5) business days to determine if an intake interview should be conducted, or if the Questionnaire will be dismissed.

D. INTAKE INTERVIEWS

- 1. Scheduling:** OHR will send the complainant an intake interview appointment letter within 20 business days of receipt of the initial complaint. The appointment letter will include the time, date, and location of the interview appointment.
- 2.** Complainants shall receive a reminder phone call approximately two (2) business days before their scheduled appointment. If the complainant cannot attend the scheduled appointment, they must contact OHR at least one (1) business day before the scheduled date if they are seeking to reschedule. If complainant does not contact OHR to reschedule their appointment and misses the scheduled date, they must request a new date from OHR within two (2) weeks, or re-submit the Complaint Questionnaire.
 - a. Government Complaints:** For complaints against the District government, the complainant must bring a copy of the "Exit Letter" or proof of an attempt to obtain the Exit Letter to the intake interview.

3. Procedures During the Intake Interview:

- a.** If the complainant is represented by legal counsel, counsel may attend the interview. If counsel does not wish to attend, counsel must submit a letter to OHR authorizing the Intake Interview to proceed without their presence. If counsel attends the interview, counsel may advise the complainant, but the complainant is required to answer all questions asked by the Intake Officer directly.
- b.** If the complainant is represented by a non-attorney personal representative, the complainant must sign OHR's "Complainant's Acknowledgement of Representation Form."

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- c. During the intake interview, the assigned Intake Officer will explain the mission and general functions of OHR, discrimination laws enforced by OHR, protected traits in the District, and inform the complainant of the complaint process, including mandatory mediation and investigative procedures.
 - d. The Intake Officer will explain that if a Charge is drafted and docketed, the case will be assigned to an Investigator, who may initiate the investigation prior to completion of mediation.

4. After the intake interview, the Intake Officer will either draft a Charge of Discrimination for docketing or dismiss the initial complaint consistent with subsection (E) below. If the Charge is drafted, the Intake Officer will contact the complainant to sign and notarize the Charge. Thereafter, OHR will docket the Charge and assign a Human Rights Officer for investigation of the Charge. Once the Charge is docketed, OHR will schedule the parties for mandatory mediation of the Charge.

E. DISMISSALS AFTER INTAKE INTERVIEW: OHR may dismiss complaints after an intake interview, and before the complaint is drafted into a Charge of Discrimination. The reasons for dismissal may include lack of jurisdiction, lack of sufficient information, the filing of frivolous claims, or for administrative reasons.

1. Dismissal for Lack of Jurisdiction Over Respondent: In general, OHR may not have jurisdiction over the following matters:

- a. Complaints against a federal entity. These must be filed with the EEOC or court.
- b. Complaints against the D.C. court systems and federal court systems. These must be filed with the EEOC or court as appropriate.
- c. Complaints against the Washington Metropolitan Area Transit Authority (WMATA), which fall under federal jurisdiction. These must be filed with the EEOC or other federal agency with jurisdiction.
- d. Complaints regarding police brutality or similar complaints. These must be filed with the Police Complaint Board at the Office of Police Complaints.
- e. Complaints from Prisoners/Inmates. These must be filed with the U.S. Bureau of Prisons.
- f. Complaints against the D.C. Bar. These complaints may be filed with the DC Court of Appeals.
- g. Complaints against respondents who do not maintain a presence within the District of Columbia.
- h. In housing cases, complaints against entities which are exempt under the Fair Housing Act.

2. Dismissal for Lack of Jurisdiction Over the Subject Matter: OHR may not have subject matter jurisdiction over the following matters:

- a. Complaints that do not state a claim for which relief can be granted under the Human Rights Act or any other laws enforced by OHR (i.e. claims which are not based upon a

protected trait, such as breach of contract claims and housing code violations).

- b. Complaints involving wage and labor laws. Such complaints may be filed with either the Department of Employment Services or the U.S. Department of Labor.
- c. Complaints involving a statute or regulations that OHR does not have jurisdiction over (i.e. Department of For-Hire Vehicles regulations).
- d. Landlord/Tenant complaints. These may be filed with the Superior Court of the District of Columbia, Landlord and Tenant Branch.
- e. Complaints in which the alleged unlawful discriminatory practice did not occur in the District of Columbia.

3. Additional Grounds for Dismissal of a Complaint: OHR may dismiss a complaint for lack of sufficient information to support a claim for which relief can be granted under laws enforced by OHR. The following list is provided for guidance only and is not exhaustive:

a. **Untimely Charges.** Complaints filed after the statute of limitation (see Section (II) (B) (1)). As noted above, the date of filing of the Complaint Questionnaire, whether via online, fax or in-person, will constitute the filing date.

b. **Self-defeating Charges.** Complaints in which the complainant provides information that negates an inference of disparate treatment based on a protected basis.

Example. Tony Smith, an African American man alleges race and sex discrimination in promotion. He identifies the individual who received the promotion as an African American male. Mr. Smith explains he believes he was more deserving of the promotion based on his education and experience. Since both Mr. Smith and the selectee are of the same race and sex, this may be a self-defeating charge.

c. **Lack of Supporting Information.** Complaints with no information regarding direct or circumstantial evidence to support a claim of discrimination.

Example. Alice Bourne files a complaint against ACME Company alleging that the company's employment application violates the FCRSA. However, Ms. Bourne fails to provide the alleged unlawful employment application or information leading to the application.

d. **No Harm.** Complaints in which the employment/housing action complained of causes no real harm (e.g., being assigned a task that the complainant does not like but which is within the scope of their duties and is not significantly more work than that of their colleagues).

4. Administrative Dismissals: OHR may dismiss a complaint for administrative reasons, including but not limited to the following:

a. **Failure to Prosecute.** Complainants have a duty to provide requested information and remain engaged with OHR. If the complainant is absent and has failed to contact OHR, or cannot be contacted despite OHR's attempts to communicate by telephone, mail, and email, and at least 30 days have passed since OHR's last form of communication, the complaint may be administratively dismissed.

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- b. **Administrative Convenience.** OHR has prosecutorial discretion to dismiss a complaint for administrative convenience. This discretion provides OHR with the authority to decide how to expend its resources. Examples of such dismissals may include claims where the EEOC is investigating the matter, where OHR learns that the complainant has filed a similar claim in a court of competent jurisdiction, or where OHR simply does not have the resources to pursue the investigation.
 - c. **Frivolous Complaints.** Consistent with 4 DCMR § 705.8, OHR may dismiss a complaint it determines to be frivolous, which may include unreasonable number of complaints filed during a given time period.

SECTION III: SERVICE OF CHARGE OF DISCRIMINATION

- A. **VERIFIED CHARGE OF DISCRIMINATION.** If OHR docket a Charge of Discrimination after the intake interview, the Charge must be signed by the complainant and verified before a notary public.
- B. **SERVICE OF CHARGE OF DISCRIMINATION.** Within 15 calendar days of the docket date of the Charge of Discrimination, OHR's Mediation Unit will serve the Charge upon the parties via a Letter of Notice. The Letter of Notice will include a copy of the Charge and a date for mediation, which is required for all cases filed at OHR and which all parties must attend.

SECTION IV: MANDATORY MEDIATION

- A. **SCHEDULING.** Pursuant to the Human Rights Act,⁵ **ALL** cases must be mediated and the parties will be notified of their mediation in the Letter of Notice.
- B. **RESCHEDULING.** If a party cannot attend the scheduled mediation date, that party may request to reschedule ONCE and must do so within seven (7) calendar days of the date of the Letter of Notice. Once the mediation is rescheduled, the parties must attend the mediation, unless proof of extigent circumstances is provided to OHR.

If mediation does not occur within 45 days of the mediation date assigned in the Letter of Notice and it is a result of the respondent's failure to participate, a full investigation of the cases will commence pursuant to D.C. Code § 2-1403.04(c).

If the complainant fails to participate in mediation, the case will be dismissed.

All mediation sessions will commence promptly at the designated time. If either party reports more than 30 minutes late, OHR may reschedule the mediation or forward the case for the full investigation.

- C. **INVESTIGATION DURING MEDIATION.** Once docketed cases are assigned to a Human Rights Officer (HRO), HROs may initiate the investigation prior to completion of mediation.

⁵ See D.C. Code § 2-1403.04(c).

- D. FAILURE TO COMPLY.** Pursuant to the Human Rights Act, if a party fails to comply with the mandatory mediation, by failing to attend mediation on a scheduled date, or failing to make a timely request to reschedule, the party shall upon conviction, be punished by imprisonment for not more than 10 days, or by a fine of not more than \$300, or by both.⁶
- E. MEDIATION AGREEMENTS.** If mediation results in a settlement agreement at the conclusion of the session, the mediator will assist with producing an agreement memorializing the terms agreed upon by the parties. Once the agreement is signed by all parties and the OHR Director, the case will be closed at OHR. All agreements shall comply with the standard requirements set forth by the Mediation Manager and OHR Director. If the parties reach an agreement outside of OHR, the parties **MUST** inform OHR of the agreement within 30 days of execution of the agreement. The Office may request a copy of the agreement for its records. Upon notice of an executed agreement, the case will be closed at OHR. **PLEASE NOTE: outside settlement agreements are NOT enforceable by the Office of Human Rights.** OHR strongly encourages parties not represented by legal counsel at the time of mediation to have an attorney review the agreement before signing it.
- F. NO MEDIATION AGREEMENT.** If an agreement is not reached during mediation, OHR will initiate a full investigation.
- G. BREACH OF MEDIATION AGREEMENT.** If a party believes that a term of the settlement agreement executed at OHR mediation has been breached, that party must make a formal Request for Review of the alleged breach by submitting the request in writing to the Director **within 30 calendar days** of the alleged violation. Upon receipt of the Request for Review, the Director shall notify the party being charged with breach of the violation and permit the party an opportunity to respond to the allegation. If OHR finds that a party is in breach of the settlement agreement, the offending party shall be notified and given **five (5) business days** to cure the breach. If the party fails to comply within the given time, the matter shall be certified to the Office of the Attorney General (OAG), or such other agencies as may be appropriate, for enforcement. However, the party alleging the breach maintains a right to file a breach of contract action in Superior Court.

SECTION V. INVESTIGATION

A. INVESTIGATION PROCEDURES.

- 1. Request for Respondent's Position Statement.** Once a Charge of Discrimination is docketed, OHR will serve the Charge within 15 calendar days via a Letter of Notice which includes the date the Respondent's Position Statement is due.⁷ Respondent must provide the position statement within 20 calendar days of the receipt of the request.⁸ See Subsection (5) below for extensions.

⁶ See D.C. Code § 2-1402.64.

⁷ See 4 DCMR § 712.1.

⁸ See 4 DCMR § 712.2.

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- 2. Failure to Provide Timely Responses.** Failure to timely supply documents and information requested by the Office in connection with a matter under investigation may result in a finding of an unlawful discriminatory practice pursuant to D.C. Code § 2-1402.64(b).
 - 3. Rebuttal Request.** The assigned Human Rights Officer will request whether the complainant desires to provide a rebuttal statement to the respondent's Position Statement. The HRO will provide complainant with a summary of the Position Statement within **30 calendar days** (as practicable) of the HRO's receipt of the Position Statement.

PLEASE NOTE: Pursuant to D.C. Code § 2-1402.52, records and reports filed with OHR are confidential and will not be made available to the public. Once a case is closed, the parties may request a copy of the OHR complaint file by using FOIA procedures. See 4 DCMR §§ 110.4, 723, Section IX below for OHR's document retention schedule.

- 4. Complainant's Rebuttal.** The complainant may provide a rebuttal statement to the respondent's Position Statement. If the complainant elects to do so, the rebuttal must be submitted to OHR within **20 calendar days** of receipt of the summary of the Position Statement. Rebuttals may be provided in writing or verbally to the Human Rights Officer.
- 5. Request for Extensions.** In responding to OHR's requests, the parties may request one (1) extension of no more than **14 calendar days**. A second extension will require proof of exigent circumstances and approval by the Director or their designee. Failure to provide requested information and documents may result in either an amendment to the Charge of Discrimination to include an allegation of willful resistance or a finding of an unlawful discriminatory practice,⁸ or dismissal of the Charge for failure to cooperate.
- 6. Interviews.** During the investigation, OHR may schedule interviews with witnesses identified by the complainant, respondent, or third-party witnesses. OHR may also interview other witnesses whom the OHR deems relevant. Where appropriate, OHR may obtain witness statements or affidavits in lieu of interviews. OHR may also conduct on-site visits. **OHR will make a reasonable number of attempts to reach witnesses; however, if a witness is not available, in the interest of case resolution, OHR will proceed with the investigation without further delay.**
- 7. Fact Finding Conferences.** Where appropriate, the Director or their designee, may conduct a fact-finding conference consistent with 4 DCMR § 713. In such event, the parties shall be provided with notice at least seven (7) calendar days of the scheduled conference. Fact finding conferences may be scheduled to expedite Charges of Discrimination where allegations are narrowly defined and the issues are limited to determining whether the complainant was harmed. All fact finding conferences shall be recorded.

⁹ See D.C. Code § 2-1402.64.

8. **Letter of Determination (LOD).** Upon completion of the investigation, the assigned HRO will make a recommendation as to whether probable cause exists to believe discriminatory conduct may have occurred. The HRO will submit the recommendation via Letter of Determination to the Office of General Counsel for review. Thereafter, the General Counsel will forward the LOD to the Director for final review and signature.
9. **Willful Resistance.** The Office of Human Rights retains the right to amend the Charge of Discrimination to include an allegation of willful resistance if any party willfully resists, prevents, impedes, or interferes with the Office of Human Rights or the Commission on Human Rights, or any of their representatives, in the performance of any duty under the Human Rights Act.¹⁰

SECTION VI. PROBABLE CAUSE DETERMINATION & LEGAL SUFFICIENCY

- A. **PROBABLE CAUSE STANDARD.** OHR's duty at the probable cause stage is to consider all evidence relating to the allegations asserted in order to determine whether the complainant's claims are reasonable. A finding of probable cause shall be based upon credible, probative, and substantial evidence which demonstrates a nexus between the harm complained of and the protected characteristic or activity of the complainant.
- B. **REVIEW OF LETTER OF DETERMINATION.** The Office of General Counsel (OGC) at OHR will review the case file and Letter of Determination for legal sufficiency. After review, the OGC shall send the LOD to the Director recommending probable cause or no probable cause. The Director shall approve the determination or make a substitute determination and issue a final determination to the parties.

SECTION VII. RECONSIDERATION OR REQUEST FOR REVIEW

- A. **NO PROBABLE CAUSE FINDING:** If OHR finds there is no probable cause, the following three options are available to the complainant:
 1. File a Request for Reconsideration with OHR;
 - a. If the request is denied, the complainant may file a Petition for Review with the D.C. Superior Court.
 2. File a Substantial Weight Review with the EEOC if the matter involves EEOC subject matter jurisdiction; or
 3. Request judicial review of the LOD by filing a Petition for Review with the D.C. Superior Court.
- B. **PROBABLE CAUSE FINDING:** If OHR finds probable cause, the respondent may file a Request for Reconsideration. If the request is denied, the parties will be required to undergo "conciliation" in order to attempt resolution of the matter.
- C. **REQUEST FOR RECONSIDERATION:** Upon issuance of the LOD, the parties may file a Request for Reconsideration within **15 calendar days** of the date of the Letter of Determination. The request must be on the grounds of newly discovered evidence, misapplication of laws, or misstatement of material facts, and **may not exceed ten (10) pages** in length.

¹⁰ See D.C. Code § 2-1402.64(a).

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- D. JUDICIAL REVIEW.** In private cases, if no probable cause is found, the complainant may file a Petition for Review with the Superior Court of the District of Columbia within three (3) years of the Letter of Determination. In government cases, the complainant must file such Petition within thirty (30) calendar days of the final decision.

SECTION VIII. CONCILIATION

If probable cause is found and a Request for Reconsideration has been denied, the parties will be required to undergo “conciliation” in order to attempt resolution of the matter. If the parties reach an agreement during conciliation, OHR will close the case. If conciliation fails, the parties will proceed with a merits hearing or summary determination for a final agency decision.

SECTION IX. FORMAL HEARING

If conciliation does not result in a final settlement agreement, the parties will proceed to a formal hearing for a final agency decision. For more information on hearing procedures before the Commission, please consult 4 DCMR § 400 *et seq.*

- A. PRIVATE EMPLOYERS:** In matters against private employers (non-government), the parties will proceed to a public hearing on the merits before the D.C. Commission on Human Rights (Commission) for the agency final decision.
- B. GOVERNMENT EMPLOYERS:** In matters against the District of Columbia government, the parties will proceed to a hearing before an independent hearing examiner who will either conduct a hearing or issue a summary determination, after which the Director of the Office of Human Rights will make a final agency decision.
- C. DCFMLA CLAIMS:** In complaints involving claims under the D.C. Family and Medical Leave Act, the parties will proceed to a hearing (on those claims) before an independent hearing examiner, after which the Director of the Office of Human Rights will make a final agency decision.
- D. HOUSING CLAIMS: Where OHR has found probable cause** in complaints alleging unlawful discrimination in residential real estate transactions or violations of the Fair Housing Act, a party may elect to have the claims (for which OHR has found probable cause) removed to the Superior Court of the District of Columbia for a hearing on the merits. See D.C. Code § 2-1403.05(f)-(g). If a party elects to remove the case to Superior Court, they must make this election: (1) via certified mail to the OHR Director and to all parties to the complaint; AND (2) within **20 calendar days** after receipt of the Letter of Determination. If a timely election is made, within **30 calendar days** after the election, the OHR Director shall authorize the Office of the Attorney General for the District of Columbia (OAG) to institute a civil action. Because OAG primarily pursues the public interest in instituting these civil actions, the complainant or any aggrieved party may intervene in the civil action. IF, the parties do not elect to remove the case to the Superior Court of the District of Columbia, the parties will be scheduled to attend and participate in a Conciliation conference in an effort to fully resolve the complaint and memorialize through a written executed Conciliation Agreement. If the conciliation is unsuccessful, the case will then be certified to the Commission on Human Rights for a hearing before an Administrative Law Judge.

SECTION X. APPEAL

- A. APPEAL:** For private matters, either party may appeal the final decision of the Commission on Human Rights to the D.C. Court of Appeals. For government matters, either party may appeal the final decision of the Director to the D.C. Superior Court. The appeals must be **filed within 30 calendar days** of the final decision.

SECTION XI. REQUEST FOR CASE RECORDS

- A. RECORDS:** Pursuant to D.C. Code § 2-1402.52, records and reports filed with OHR are confidential and will not be made available to the public. Once a case is closed, only the parties or their representative may request a copy of the OHR complaint file by using FOIA procedures.¹¹
- B. RETENTION SCHEDULE: OHR's retention schedule is as follows:**

Type of Document	Retention Schedule
Probable Cause Case Files	These records are kept at OHR for one (1) year after close date; thereafter, the records are sent to the District's Archiving Center.
No Probable Cause Case Files	These records are kept at OHR for one (1) year after close date; thereafter, the records will be sent to the DC Records Center for four (4) years and destroyed thereafter.
Dismissals	These records are kept at OHR for one (1) year after close date; thereafter, the records will be sent to the DC Records Center for four (4) years and destroyed thereafter.

¹¹ See 4 DCMR §§ 110.4, 723.



Office of Human Rights
DISTRICT OF COLUMBIA