



DENVER
THE MILE HIGH CITY

Human Rights & Community Relations
Denver Anti-Discrimination Office

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RULES AND REGULATIONS

THE AGENCY FOR HUMAN RIGHTS AND COMMUNITY RELATIONS OF THE CITY AND COUNTY OF DENVER OPERATES UNDER THE AUTHORITY OF THE DENVER REVISED MUNICIPAL CODE, CHAPTER 28, ARTICLE IV, WHICH ENFORCES THE PROHIBITION OF DISCRIMINATION IN EMPLOYMENT, HOUSING AND COMMERCIAL SPACE, PUBLIC ACCOMODATIONS, EDUCATIONAL INSTITUTIONS AND HEALTH AND WELFARE SERVICES

I. INTERPRETATION

- a. Construction of rules. These rules shall be liberally construed to expedite the action of the agency and to effectuate the purposes of the law. These rules are not intended to set forth a complete procedure, but rather supplement and clarify the law.
- b. The definitions and rules of construction used herein follow those in section 28-92 or 1 – 2 of the Revised Municipal Code of the City and County of Denver.

II. THE COMPLAINT

Who may file a complaint?

A complaint may be filed by any person in accordance with §28-107. The Complainant must complete the intake form provided by the agency.

Jurisdiction and Probable Cause

According to §28-108(b), the agency may decide whether it has jurisdiction over the complaint, and if so, whether there is probable cause to believe that the respondent has engaged or is engaging in a discriminatory practice.

Confidentiality

Pursuant to §28-105(b), the identity of persons and properties contained in reports submitted to the agency shall be kept confidential. However, the City and County of Denver is subject to but not limited to, the Colorado Open Records Act and orders of court, as such disclosure may be required in limited situations. Since it would cause substantial injury to the public interest to disclose the information gathered during the investigation prior to deliberations concerning a probable cause or not probable cause determination, the agency shall not disclose such information without the written consent of both parties. Pursuant to §28-109(c) information concerning conciliation efforts shall always be confidential.

Nothing in this section shall be construed to prevent the agency from disclosing final action on a complaint, including the reasons for dismissing the charge and terms of a conciliation agreement, or the contents of an order issued after a hearing.



Form

The complaint shall be in writing and shall be signed and verified by the charging party before a notary public or other person authorized by law to administer oaths and take acknowledgments.

Required Contents

The full name and current mailing address of the party filing the complaint.

The full name and current mailing address of the party alleged to have committed the violation.

A short and plain statement of the facts, including particulars which gave rise to the alleged violation and which set forth the discriminatory practice.

The date of the alleged violation or, if the violation is of a continuing nature, the date of said violation shall be the date of the last violation prior to filing the complaint.

A statement disclosing whether any proceeding involving the alleged violation has been commenced before a state or federal agency charged with the enforcement of non-discrimination laws and if so, the date of such commencement and the name of the agency.

A statement that any conduct of the Complainant is not for the purpose of harassment or entrapment of the person, employer, or organization against whom the complaint is filed.

Staff members of the agency shall be available to assist in the drafting and filing of the complaint at the office of the agency during regular business hours.

Place of Filing

Complaints shall be filed at the office of the agency during regular business hours – BY APPOINTMENT ONLY!

Date of Filing

The complaint shall be deemed filed as of the date of receipt at the office of the agency. The Date of filing commences upon completion of the intake form along with the completed personal statement. The date of filing is utilized for calculation purposes to determine the timeline under which the Denver Anti-Discrimination Office is given to make its determination.

Manner of Filing

Complaints shall be filed in person at the Denver Anti-Discrimination Office.

Notice and Entry of Appearance

Whenever notice is required to be furnished to any party, either by personal delivery or by mail, such notice shall also be furnished to the party's counsel, if an entry of appearance has been made before that agency. Whenever a party files any pleadings, motions or briefs with the agency, the party shall send/serve a copy on all other parties and their counsel.

Amendments

The Complainant shall have the right to reasonably amend the complaint prior to the agency's findings. Amendments shall be made pursuant to Denver Revised Municipal Code, Chapter 28, Article

IV. Substantive amendments shall be treated as a new complaint for the purpose of allowing the agency appropriate time to determine jurisdiction or probable cause under §28-108(b).

Additional and New Complaints

The Complainant may file new or additional complaints alleging discriminatory acts which have happened since the date of the original or amended complaint. Additional and new complaints shall be subject to notice requirements pursuant to §28-108(a.).

Withdrawal

A Complaint, amendments to a Complaint, additional or new complaints may be voluntarily withdrawn at the request of the Complaint pursuant to §28-107(b).

III. INVESTIGATION

Investigative Authority

The investigation of a complaint may be made by the agency, its investigators, or any agency representative. The agency will accept any statement of position or evidence with respect to the allegations of the complaint which the person claiming to be aggrieved or the Respondent wishes to make.

The agency may utilize the services of appropriate federal and state agencies which are charged with the administration of non-discriminatory practice laws. The agency may enter into an agreement with other agencies and/or refer the complaint to other agencies charged with the administration of non-discriminatory practice laws.

Whenever a federal or state agency charged with the administration of non-discriminatory practice law and with jurisdiction over the complaint reaches a decision, completes an investigation, or is in the process of conducting an investigation which is the same or substantially similar to the subject matter of the complaint filed with the agency, the agency shall not render a decision, investigate the complaint, or hold a hearing unless:

- a. New and material evidence is available that was not readily available when the previous decision was made or investigation was conducted.
- b. The previous decision or investigation was based on erroneous interpretation of Denver law.
- c. The previous decision involved policy considerations that may have significant effect for the City and County of Denver beyond the case at hand.

The director or agency representative designated for the purpose of exercising such authority shall have the authority to sign and issue a subpoena requiring:

- a. The attendance and testimony of witnesses.
- b. The production of evidence, including, but not limited to books and papers, records, correspondence or documents, in the possession or under the control of the person subpoenaed; and
- c. Access to evidence for the purposes of examination and the right to copy.

Resisting the Agency and Falsifying Documents and/or Testimony

Pursuant to §28-101 and §28-102, it is a crime to resist, impede or interfere with the agency in the performance of its duties; to willfully violate an order of the agency; to willfully falsify documents, records, or reports required or subpoenaed pursuant to this ordinance; to provide willfully false testimony; or to intimidate any witness or Complainant.

Dismissal

If the agency determines that it does not have jurisdiction, it shall dismiss the complaint.

If the director determines either upon the face of the complaint or upon information gathered during the investigation that probable cause for the complaint does not exist, the director shall dismiss the charge.

The agency may dismiss the complaint:

- a. Where the Complainant fails to provide requested necessary information, including but not limited to Complainant's current address; or
- b. Where the Complainant fails or refuses to appear or be available for interviews or conferences as necessary; or
- c. Where the Complaint fails or refuses to sign a conciliation agreement that in the judgment of the agency affords full relief for the harm alleged by the Complainant; or
- d. Where the Complainant otherwise refuses to cooperate to the extent that the agency is unable to resolve the issue of the complaint; or
- e. Where the agency does not render a decision, investigate a complaint, or hold a hearing.

Whenever the agency dismisses a complaint under this section of the rules, the agency shall serve notice upon the Complainant and the Respondent in writing.

The Complainant shall have ten (10) days from the date of the mailing or the date of personal delivery in which to respond to the agency's notice of intent to dismiss the complaint filing a written response with the agency or by curing the defect.

IV. CONFERENCE AND CONCILIATION

Fact Finding Conference

Prior to conducting an in-depth investigation, the agency may hold a fact-finding conference with the parties. The fact-finding conference is intended to define the issues, to determine which elements are undisputed, to resolve those issues which can be resolved, and to ascertain whether there is a basis for a conciliation agreement.

Conciliation Agreement

The agency shall endeavor to eliminate the alleged violation by a conciliation agreement, signed by all parties and the director or agency representative, where under the alleged violation is eliminated and the Complainant is made whole to the greatest extent practicable.

A conciliation agreement need not contain a declaration or finding that a violation has in fact occurred. A conciliation agreement may provide for dismissal of the complaint without or without prejudice.

If for any reason, the Complainant, Respondent, or the agency representative refuses to sign a conciliation agreement, then the agency may elect to conduct an investigation or dismiss the claim for refusing to sign a conciliation agreement that in the judgment of the agency affords full relief for the harm alleged by the Complainant.

At any time prior to a final order from the agency pursuant to a formal hearing conducted by the agency, the Complainant, the Respondent and the agency representative may agree to sign a conciliation agreement.

V. FORMAL HEARING

Hearing

After the investigation is completed, and the Complaint has not been settled by conciliation, dismissed by the agency, or the agency has made a finding of probable cause, the agency may conduct a formal hearing.

Hearing Officer

The hearing shall be conducted by the director or his/her designated hearing officer.

1. All hearings shall be public. The hearing officer may exclude from the hearing room or from further participation in the proceedings any person who engages in improper conduct.
2. Upon the motion of any party or upon the motion of the hearing officer, all witnesses may be excluded from the hearing room, except for the parties or Complainant(s).
3. The hearing officer shall have full authority to control the proceedings, to admit or exclude testimony or other offers of evidence, and to rule upon all motions and objections, and to hold a pre-hearing conference if desirable.

Ex-Parte Communications

The hearing officer shall not consult with any person or any party, on any fact in issue unless upon notice and opportunity for all parties to participate. Pursuant to §28-111(d), no agency staff members or agent involved with investigating or presenting the case in support of the Complainant shall participate or advise in the rendering of the recommended decision or order.

Notice

The agency shall issue and mail a written notice and complaint requiring Respondent to answer the charges at a formal hearing before a hearing officer. The notice shall state the date, time and place of the hearing. The notice shall state the legal authority and jurisdiction under which the hearing is to be held and the matters of fact and law upon which the complaint is based. Such notice shall also inform the Respondent that a written, verified answer to the complaint may be filed prior to or on the date of the hearing. All notices shall advise the Respondent that failure to answer a complaint at a hearing may result in the entry of the judgment against the Respondent.

Determination of Motions

Parties may file a motion involving issues of law which shall be supported by legal authority.

Whenever the hearing officer enters an order denying or granting a motion without a hearing, all parties shall be notified by the agency of such order. If the hearing officer desires an evidentiary hearing on the motion, all parties shall be notified by the agency.

Evidence

The agency shall not be bound by strict rules of evidence required by the courts. The right of cross examination shall be preserved, and such rules and requirements of proof shall conform to the extent practical with those in civil non-jury cases in the district courts.

All oral testimony shall be given under oath or affirmation.

The hearing officer may permit the parties or their counsel to present oral arguments at the hearing and to file briefs within such time as the hearing officer shall determine considering the convenience of the parties.

Burden of Proof

The agency shall present Complainant's case and shall have the burden of showing, by a preponderance of the evidence that Respondent has engaged in or is engaging in discriminatory practice(s). Preponderance of the evidence shall mean that evidence which, when fairly considered, produces the stronger impression and has the greater weight, and is more convincing as to its truth when weighed against the evidence in opposition.

Reporting

Hearing shall be recorded either by audio recording or court reporter. Upon request, transcripts may be provided and a reasonable fee will be assessed to the requesting party. The record of proceedings shall be retained by the agency.

VI. DECISION AND ORDER

Decision and Order

After the hearing, the hearing officer shall promptly issue a written recommendation including findings and fact and conclusions of law, to the director. The director shall approve or disapprove the recommendation and shall issue the decision and order pursuant to § 28-112.

Enforcement

The director may seek judicial enforcement of any orders of the agency.