

DEPARTMENT OF CIVIL RIGHTS

CIVIL RIGHTS COMMISSION

ORGANIZATION, PRACTICE, AND PROCEDURE

(By authority conferred on the civil rights commission by section 29 of article 5 of the state constitution and section 5 of Act No. 45 of the Public Acts of the Second Extra Session of 1963, being S37.5 of the Michigan Compiled Laws)

R 37.1 Civil rights within commission jurisdiction.

Rule 1. The civil rights within the jurisdiction of the commission shall be those guaranteed by law and the constitution including, but not limited to, the areas of equal protection of the laws, employment, education, housing, and public accommodations. The jurisdiction of the commission shall not be limited to the processing of complaints.

History: 1979 AC.

R 37.2 Definitions.

Rule 2. As used in these rules:

(a) "Chairperson" means the duly appointed or elected chairperson or a co-chairperson of the civil rights commission or, in the event of his or her or their absence, the acting chairperson designated by the remaining members of the commission.

(b) "Charge" means that document or pleading authorized by the department which initiates a contested case hearing under R 37.12.

(c) "Claimant" means any person who files a complaint or applies to the department for the issuance of a charge.

(d) "Commission" means the state civil rights commission created by article 5, S29, of the Michigan constitution.

(e) "Commissioner" means any member of the civil rights commission.

(f) "Constitution" means the constitution of the state of Michigan.

(g) "Department" means the department of civil rights established by section 475 of Act No. 380 of the Public Acts of 1965, as amended, being S16.575 of the Michigan Compiled Laws.

(h) "Department investigator" means a member, agent, or employee of the department designated or delegated by the director to make an investigation.

(i) "Director" means the director of the department of civil rights engaged by the commission.

(j) "Hearing commissioner" means a commissioner designated by the chairperson or the commission to conduct a hearing.

(k) "Hearing referee" means an agent of the commission designated or delegated by the chairperson or the director to conduct a hearing.

(l) "Party" or "parties" means the claimant or respondent, or both, and the commission or department, or both, where appropriate.

(m) "Person" means an individual, agent, association, corporation, joint apprenticeship committee, joint stock company, labor organization, legal representative, mutual company, partnership, receiver, trust, trustee, trustee in bankruptcy, unincorporated organization, the state or a political subdivision of the state or an agency thereof, or any other legal or commercial entity.

(n) "Respondent" means any person against whom the claimant has complained, or against whom the department has issued a charge.

History: 1979 AC; 1985 AACS.

R 37.3 Commission; election and tenure of officers; quorum; voting.

Rule 3. (1) The commission, each January, shall elect from its members by a majority vote of the commission a chairperson or co-chairpersons and such other officers as the commission shall determine, who shall serve during the balance of the calendar year and until their successors have been duly elected and qualified.

(2) A majority of all members of the commission shall constitute a quorum. A majority of all the members shall be required to decide matters of a nonministerial nature, but a majority of a quorum may decide ministerial matters. A vacancy in the commission shall not impair the right of the remaining members to exercise all the powers of the commission.

History: 1979 AC; 1985 AACS.

R 37.4 Complaints.

Rule 4. (1) Any person claiming to be aggrieved by unlawful discrimination may by himself or herself or his or her counsel or other agent make, sign, and file with the department a complaint. Assistance in drafting and filing complaints shall be available, without charge, to claimants at all department offices.

(2) Any commissioner, the director, or agent authorized by the commission or director, may initiate, make, sign, and file a complaint.

(3) A complaint shall be in writing, the original being signed and verified before a notary public or other person duly authorized by law to administer oaths and take acknowledgments. Notarial service shall be furnished without charge by the department.

(4) The complaint shall include the following:

(a) The full name and address of the claimant and his or her agent, if any.

(b) The full name and address of the respondent.

(c) The alleged discrimination and a statement of the particulars thereof.

(d) The date or dates of the alleged discrimination, whether the alleged discrimination is of a continuing nature, and the dates between which the continuing discrimination is alleged to have occurred.

(e) A statement as to any other proceeding, civil or criminal, based upon the same facts, occurrences, or transactions as alleged in the complaint, together with a statement as to the status or disposition of

the other action. Where such a proceeding is pending, the commission or department may, in its discretion, delay consideration or action on the complaint filed.

(5) The complaint shall be filed with the department at 1 of its offices.

(6) The complaint shall be filed within 180 days from the date of the occurrence of the alleged discrimination, or within 180 days of the date when the occurrence of the alleged discrimination was or should have been discovered. If the alleged discrimination is of a continuing nature, the date of the occurrence of the discrimination shall be deemed to be any date subsequent to the commencement of the discrimination up to and including the date upon which the discrimination shall have ceased.

(7) The complaint may be filed by personal delivery or by mail addressed to 1 of the department's offices.

(8) Complaint forms may be obtained at any of the offices of the department.

(9) A copy of the complaint filed by the claimant shall be delivered or mailed to the respondent.

(10) The department may require answers to interrogatories, order the submission of books, papers, records, and other materials pertinent to a complaint, and require the attendance of witnesses, administer oaths, take testimony, and compel, through court authorization, compliance with its orders or an order of the commission.

(11) A complaint, or any part thereof, may be withdrawn only on written consent of the commission or department upon such conditions as shall be deemed proper in the circumstances.

History: 1979 AC.

R 37.5 Conference and conciliation.

Rule 5. (1) The respondent may be invited, at any time, to participate in a conference and conciliation in an endeavor to eliminate the alleged discrimination, and shall be invited to participate in such a conference prior to the issuance of a charge.

(2) The members of the commission and the department staff shall not disclose what has transpired in the course of such endeavors at conference and conciliation.

(3) If the department shall succeed in its endeavors at conference and conciliation, it shall mark the case accordingly and notify the parties by registered or certified mail, return receipt requested, of the terms of conciliation.

History: 1979 AC.

R 37.6 Charge; issuance; refusal to issue.

Rule 6. (1) If, after investigation, the department determines that there are sufficient grounds therefor, a charge shall be issued.

(2) If the department determines that there are insufficient grounds therefor, it shall refuse to issue a charge and shall notify the parties by registered or certified mail, return receipt requested, of the determination and of the refusal, together with the reasons therefor, and of the claimant's right to request reconsideration by the department of the determination within 30 days from the date of mailing, in accordance with R 37.7.

History: 1979 AC.

R 37.7 Reconsideration of refusal to issue charge; request; hearing.

Rule 7. (1) A claimant may request of the department a reconsideration of its refusal to issue a charge. The request shall be in writing, state specifically the grounds upon which it is based, and be filed within 30 days after the date of mailing of the notice of disposition of which reconsideration is requested. It shall be filed at any office of the department by personal delivery or by mail.

(2) The department may authorize a hearing on the request for reconsideration at such a time and place and before such hearing commissioner or commissioners or hearing referee or referees as it or the director may determine, and notice thereof shall be given to all parties to the proceedings. The parties may appear in person or by counsel, may present witnesses and testimony, and examine and cross-examine witnesses. Verbatim stenographic notes of the proceedings shall be made and kept by a competent reporter. The hearing commissioner or commissioners or hearing referee or referees shall report to the commission on such proceedings. The commission shall make a determination as to whether the department shall further consider the matter, and notify all parties by registered or certified mail, return receipt requested, and shall issue instructions for appropriate action based upon such determination.

History: 1979 AC.

R 37.8 Charge; form and content.

Rule 8. The charge shall be in writing, in such form and content as the department determines.

History: 1979 AC.

R 37.9 Charge; amendment.

Rule 9. The commission on its own motion, on motion of the department, or on motion of the claimant may amend a charge at any time prior to issuance of an order based on the charge.

History: 1979 AC.

R 37.10 Charge; service.

Rule 10. Copies of the charge or amended charge shall be delivered or sent by certified or registered mail, return receipt requested, to the parties, together with notice to the respondent to answer the charge as provided in R 37.11.

History: 1979 AC.

R 37.11 Answer.

Rule 11. (1) The respondent shall file a written verified answer within 20 days from the date of service of the charge.

(2) The answer shall be filed in duplicate at any office of the department. The filing shall be by personal delivery or by registered or certified mail, return receipt requested.

(3) Upon request, the commission or director may, for good cause shown, extend the time within which the answer may be filed.

(4) The answer shall be in writing, the original being signed and verified by the respondent. The answer shall contain the post office address of the respondent, and if he or she is represented by counsel, the name and post office address of counsel. The answer shall contain a general or specific denial or admission of each and every allegation of the charge, or a denial of any knowledge or information sufficient to form a belief, and a statement of any matter constituting a defense. Any allegation in the charge which is not denied or admitted in the answer, unless the respondent shall state in the answer that he or she is without knowledge or information sufficient to form a belief, shall be deemed admitted.

(5) The respondent shall have the right reasonably and fairly to amend his or her answer:

(a) The respondent's right to amend his or her answer may be exercised at any time up to 10 days before the first hearing, without permission, and thereafter, in the discretion of the hearing commissioner or commissioners, or hearing referee or referees, on application duly made therefor.

(b) Duplicate copies of an amended answer shall be filed with the department.

(6) If an answer is not filed within the time provided for in these rules, each of the allegations in the charge shall be deemed admitted. Upon application, the referee, for good cause shown, may set aside the admission.

(7) The department, within 5 days after the date of filing an answer or amended answer, shall send a copy thereof by registered or certified mail, return receipt requested, to the claimant at his or her last known place of residence or to his or her counsel.

History: 1979 AC.

R 37.12 Hearing.

Rule 12. (1) Upon or after the issuance and service of a charge, the commission or director may schedule and summon the parties to a hearing thereon. The commission may at any time schedule and conduct a hearing with respect to any matter which in the judgment of the commission may involve unlawful discrimination and may warrant investigation by the commission, regardless of whether a charge or a complaint therefor shall have been filed by or with the department.

(2) Notice of the time and place of the hearing shall be mailed or delivered to the parties not less than 20 days prior to the date of the hearing. Upon good cause shown, the commission or director may order a hearing upon shorter notice. However, notice

of the time and place of hearing shall be mailed or delivered to the parties not less than 7 days prior to the date of the hearing, unless such notice is waived by each party.

(3) A hearing shall be conducted by 1 or more hearing commissioners, or

1 or more hearing referees, or any combination of hearing commissioners or referees, which hearing commissioners or referees shall hear the evidence and report thereon to the commission.

(4) Unless waived by the hearing commissioners or the hearing referees, the claimant shall be present at the hearing. The respondent may appear at the hearing in person or by counsel, examine and cross-examine witnesses and, if an answer has been filed, may submit oral testimony and other evidence in support of the answer.

(5) Hearings shall be held at a place designated by the commission or director having due regard for the convenience of the parties and witnesses.

(6) The case in support of the charge shall be presented at the hearing by the department's counsel or by a member of the department's staff, or upon notice from claimant, by the claimant or his or her counsel, subject, however, to the right of the department to present other or additional evidence or argument.

(7) Hearing commissioners or referees shall have full authority to control the procedure of the hearing, to admit or exclude testimony or other evidence without regard to strict rules of evidence, and to rule upon all motions and objections:

(a) On their own motion, or at the request of a party, the hearing commissioners or referees shall order witnesses excluded so that they cannot hear the testimony of other witnesses. The hearing commissioners or referees shall not exclude a party, an individual designated by a party as its representative, or a person whose presence is shown by a party to be essential to the party's presentation of his or her position.

(b) Hearing commissioners or referees may examine witnesses and direct the production of papers or other evidence.

(c) Oral testimony shall be given under oath or affirmation and verbatim stenographic notes of the hearing shall be made and kept by a competent reporter. Transcripts shall be kept and, prior to the issuance of a final order, shall be available to the commissioners and hearing referees; parties may obtain transcripts by making suitable arrangements with the reporters, and the department shall not be responsible for providing transcripts to the parties prior to issuance of final orders.

(d) Where hearings are conducted by 3 or more commissioners or referees, all rulings and determinations shall be made by majority rule.

(e) Evidence of the department's endeavors at conciliation shall not be admissible at the hearing.

(8) Hearing commissioners or referees or a party may request a prehearing conference which the hearing commissioner or referee may schedule, subject to objection by any party. Such prehearing conference may be held to obtain admissions, stipulations as to fact and law,

agreement on the issues, and to determine the authenticity of documents.

Written stipulations may be introduced in evidence if signed by each person sought to be bound thereby, or by his or her counsel. Oral stipulations may be made on the record at open hearing.

(9) Hearing commissioners or referees may continue a hearing from day to day or adjourn it to a later date or to a different place by announcement thereof at the hearing or by appropriate notice to all parties.

(10) Hearing commissioners or referees shall permit the parties or their counsel or the member of the department's staff presenting the case in support of the charge, and may permit interveners, to argue orally before them and to file briefs within such time limits as the hearing commissioners or referees may determine.

(11) Hearing commissioners or referees may exclude from the hearing room or from further participation in the proceeding any person who engages in improper conduct before them, except a party, his or her counsel, or a witness engaged in testifying, each of whom shall be subject to appropriate disciplinary action by the commission.

(12) Hearings shall be open to the public, unless the commission or referee shall otherwise determine.

(13) Any motion filed by a party subsequent to the issuance of a charge and prior to hearing shall be referred to the hearing commissioners or referees for decision. The hearing commissioners or referees may request briefs or schedule oral arguments, or both, as they deem necessary and, where appropriate, they may reserve their ruling until the conclusion of the hearing. All rulings upon motions shall be included in the report of the hearing commissioners or referees to the commission.

(14) A party may submit, or the hearing commissioners or referees may request, proposed findings of fact, proposed conclusions of law, and proposed orders at the conclusion of the hearing. All such proposals shall be submitted to the commission with the report of the hearing commissioners or referees.

History: 1979 AC.

R 37.13 Service of documents upon counsel.

Rule 13. If counsel has appeared in writing on behalf of a party, a copy of any notice, pleading, or other document required to be sent to a party under these rules shall be mailed to counsel instead of the party, unless there is a written request from the party or counsel that a copy be mailed to the party also.

History: 1979 AC.

R 37.14 Orders to submit pertinent material and require attendance of witnesses; other powers; cost of service; witness and mileage fees.

Rule 14. (1) At the instance of a party or on its own behalf, the commission or the department may order the submission of books, papers, records, and other pertinent material, and require the attendance of witnesses, administer oaths, take testimony and receive evidence, and compel, through court authorization, compliance with its orders.

(2) Where an order is issued at the instance of a party to the inquiry or proceedings, other than the commission or a member thereof, or the department, the cost of service and witness and mileage fees shall be borne by the party at whose instance it has been

requested and issued. When an order is issued at the instance of the commission, or a member thereof, or the department, the cost of such service and witness and mileage fees shall be borne by the commission or department. Such witness and mileage fees shall be the same as are paid to witnesses in the circuit courts of the state of Michigan.

History: 1979 AC.

R 37.15 Depositions.

Rule 15. In accordance with the Michigan general court rules, the commission, or any member thereof, or the director, on its own motion or on the application of 1 of the parties, may take or cause to be taken depositions of witnesses residing within or without the state.

History: 1979 AC.

R 37.16 Order issued after hearing.

Rule 16. (1) An order of the commission issued after hearing shall set forth the findings of fact and the basis for its decision. Following a hearing conducted under R 37.12, and prior to a final order, the commission shall transmit to the parties a copy of the report of the hearing commissioners or referees and shall give parties an opportunity to file exceptions and present written arguments to the commission. The commission may permit oral argument prior to its final decision.

(2) If upon the evidence at the hearing the commission shall find that a respondent has engaged in any unlawful discrimination, the commission shall state its findings of fact and may issue an order requiring such respondent to cease and desist from such unlawful discriminatory act and to take such affirmative action as the commission may deem appropriate, which may include reporting from time to time the manner and extent of compliance. If upon the evidence the commission shall find that a respondent has not engaged in unlawful discrimination, the commission shall state its findings of fact and shall issue an order dismissing the charge as to such respondent.

(3) Copies of orders shall be served upon parties, interveners, and their counsel by registered or certified mail, return receipt requested, or by such other means as are reasonably calculated to give actual notice, accompanied by a notice of the statutory right to judicial appeal.

(4) All orders issued after a hearing shall be filed with the director. Such orders shall be open to public inspection during regular office hours of the department.

(5) When deemed by the commission necessary to safeguard the interest of persons concerned and to prevent injustice, the commission at any time prior to or subsequent to the issuance of a charge may issue its own order or the commission or the department may apply to an appropriate court for the issuance of an order directed to or against any person or persons enjoining or prohibiting any conduct or threat thereof which violates or jeopardizes any of the rights of any person or persons guaranteed by law or the constitution.

History: 1979 AC.

R 37.17 Reopening of proceedings.

Rule 17. The commission upon its own motion, or upon request of any party or intervener, whenever justice so requires, may at any time reopen any closed proceeding upon notice to all parties and interveners. The department may reopen any proceeding closed by the department in the same manner.

History: 1979 AC.

R 37.18 Appeals from order of commission.

Rule 18. Any party claiming to be aggrieved by a final order of the commission or the department, including without limitation a refusal to issue a charge, may appeal to the circuit court of the state of Michigan having jurisdiction provided by law within 30 days of the date of service of an appealable order.

History: 1979 AC.

R 37.19 Modification or setting aside of orders.

Rule 19. Until an appeal shall have been filed in a court, as provided in R 37.18, the commission may, at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any findings or order made by it.

History: 1979 AC.

R 37.20 Declaratory ruling.

Rule 20. (1) The commission, on petition of an interested person, may issue a declaratory ruling as to the applicability of a statute, regulation, or rule to an actual state of facts upon submission to the commission of each of the following:

- (a) A clear and concise statement of the facts.
- (b) A legal brief, memorandum, or other reference to legal authorities relied upon.

(2) The commission, if it determines it shall issue a declaratory ruling, shall furnish the person with a statement to that effect and set forth the time in which the commission shall issue the ruling. The commission shall not issue a declaratory ruling after a complaint has been filed with the department.

(3) A ruling shall contain the statement of facts upon which it is based and the legal authority on which the commission relies. A ruling, once issued, is binding on the commission and the commission may not retroactively change the ruling, but nothing in this rule shall prohibit the commission from prospectively changing a ruling.

History: 1979 AC.

R 37.21 Rules; adoption; amendment or rescission.

Rule 21. New rules may be adopted and any rule may be amended or rescinded by the commission at a regular or special meeting, provided that not less than 5 members are present and voting in favor of such amendment and notice thereof shall have been given to all members of the commission not less than 10 days before the meeting at which action it is to be taken.

History: 1979 AC.

R 37.22 Rules; availability; construction.

Rule 22. (1) The rules of the commission shall be available to the public at all offices of the department.

(2) These rules shall be liberally construed to accomplish the purposes of the constitution and the policies of the commission.

History: 1979 AC.

R 37.23 Guidelines.

Rule 23. The commission may adopt interpretive or procedural guidelines, or both, at a regular or special meeting, if not less than 5 members are present and are voting in favor of such guidelines and notice thereof is given to all members of the commission not less than 10 days before the meeting at which action is to be taken. Guidelines may be amended or rescinded by the same procedure. The guidelines shall be available to the public at all offices of the department.

History: 1979 AC.

R 37.24 Record making and keeping; disclosure.

Rule 24. (1) Any person who wishes, for purposes not inconsistent with the constitution and statutes, to make any of the records prohibited by sections 206 and 402(c) of Act No. 220 of the Public Acts of 1976 and sections 206 and 402(c) of Act No. 453 of the Public Acts of 1976, being SS37.1206, 37.1402(c), 37.2206, and 37.2402(c) of the Michigan Compiled Laws, may apply to the commission, stating the specific purpose, method of compilation, and disposition of such information. The commission may permit the making or keeping of such records for limited periods upon such application.

(2) A person subject to section 206 of Act No. 453 of the Public Acts of 1976 and section 206 of Act No. 220 of the Public Acts of 1976, being SS37.2206 and 37.1206 of the Michigan Compiled Laws, shall, upon request of the department or commission, disclose information covered by the above sections and shall not thereby be in violation of those provisions. A person subject to the same sections may retain records and information previously and lawfully obtained from prospective employees, but may not disclose that information, except as provided in this rule.

History: 1979 AC.

R 37.25 Exemption from particular section of act; bona fide occupational qualification.

Rule 25. (1) A person subject to article 2 of Act No. 453 of the Public Acts of 1976, being S37.2201 et seq. of the Michigan Compiled Laws, may apply to the commission for exemption from particular sections of article 2 of Act No. 453 of the Public Acts of 1976, being S37.2201 et seq. of the Michigan Compiled Laws, on the basis that religion, national origin, age, height, weight, or sex is a bona fide occupational qualification. Applications may be obtained from, and may be submitted to, any office of the department, and the department shall transmit them to the commission.

(2) The commission may direct the department to investigate any matter deemed relevant to such applications, and the applicant shall make available any and all records, documents, data, or other information requested by the department or commission. Failure to provide such information shall result in denial of the application.

(3) An exemption shall not be granted if the same facts and circumstances are at issue in a complaint pending before the department or commission. Upon a sufficient showing, the commission may grant an exemption. The exemption may be later revoked by the commission if the commission obtains other or different information, but such revocations are prospective. Any person obtaining exemption shall notify the commission if and when the classification exempted is no longer utilized.

History: 1979 AC.

R 37.26 Agreement or memorandum of understanding with local human rights agency or commission.

Rule 26. With the approval of the commission, the department may enter into agreements or memoranda of understanding with local human rights agencies or commissions, where such agreements shall facilitate the purposes of the constitution and civil rights statutes administered by the department and the commission. The agreements may include certification for the investigation of deferred complaints.

History: 1979 AC.

R 37.27 Voluntary plans.

Rule 27. (1) Any person requesting approval of a plan in accordance with the provisions of sections 210 and 507 of Act No. 453 of the Public Acts of 1976, and sections 208, 403, and 507 of Act No. 220 of the Public Acts of 1976, being SS37.2210, 37.2507, 37.1208, 37.1403, and 37.1507 of the Michigan Compiled Laws, may submit the plan by filing it at any office of the department and requesting approval.

(2) The commission may direct the department to obtain such information as it deems necessary to approve or disapprove a plan. The person requesting approval shall make available all records or information requested, and such information shall

be deemed confidential. Information required shall include, but shall not be limited to, all of the following:

(a) Verification that the person requesting approval is not subject to any federal or state court order covering any of the practices involved in the plan.

(b) A statement of all court or agency enforcement actions presently pending.

(c) A statement of any voluntary plans previously filed with other state or federal agencies.

(d) A statement of the purpose of the plan.

(3) The commission may, prior to approving or disapproving any plan, indicate to the person requesting approval areas needing improvement in the plan, and the commission may disapprove or refuse further consideration of any plan unless such improvements are made.

History: 1979 AC.