WEST VIRGINIA ADMINISTRATIVE REGULATIONS

WEST VIRGINIA HUMAN RIGHTS COMMISSION

CHAPTER 5, Article 11, WEST VIRGINIA CODE

Series II

(1975)

SUBJECT: Rules and Regulations Pertaining to Practice and Procedure Before the West Virginia Human Rights Commission

Formally passed and approved by the West Virginia Human Rights Commission on May 8, 1975, following public hearing on such Rules and Regulations as set forth in Chapter 29A, West Virginia Code.

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Section 1. General

1.01. Policy - Every person before the West Virginia Human Rights Commission shall have their rights, privileges, or duties determined with due regard for fundamental fairness. Any person may be represented by legal counsel at any stage of proceedings before the Commission. In any contested case before the Commission, all parties thereto shall be provided with an adequate notice of hearing; fair hearing; and an objective decision supported by substantial evidence.

1.02. Authority - These regulations are issued under authority of West Virginia Code, Chapter 5, Article 11, Section 8, subsection h, in accordance with the provisions of Chapter 29-A, Article 3, of the West Virginia Code.

1.03. Effective Date - These regulations were promulgated on the 8th day of May, 1975, and become effective on the 15th day of June, 1975, and as of such effective date, shall supercede in full the Commission's previous Rules and Regulations (effective June 17, 1971).

1.04. Filing Date - These regulations were filed in the Office of the Secretary of State on the 16th day of May, 1975.

1.05. Procedure Governed - These regulations shall govern all practice and procedure before the West Virginia Human Rights Commission unless otherwise directed by the Commission.

1.06. Liberal Construction - These regulations shall be liberally construed to permit the Commission to discharge its statutory functions and to secure just and expeditious determination of all matters before the West Virginia Human Rights Commission.

1.07. Deviation from Regulations - In special cases, where good cause appears, not contrary to statute, the Commission may permit deviation from

these regulations insofar as it may find compliance therewith to be impractical or unnecessary.

1.08. Practice Where Regulations Do Not Govern - In situations where these regulations do not apply, the Commission's discretion shall be exercised in accordance with traditional notions of fair play and substantial justice.

1.09. Severability - If any of these regulations be held invalid, it shall not be construed to invalidate any of the other provisions of these regulations.

1.10. Availability of Regulations - The regulations of the Commission shall be on file in the office of the Secretary of State.

1.11 Additional Copies - Additional copies of the regulations of the Commission shall be available to the general public at any Commission office and upon request.

1.12. Delegation of Powers and Duties - Except where contrary to law, the Commission may delegate any of the powers and duties of the Commission to members of the staff or employees of the Commission.

1.13. Effect of Amendments to the Act - In the event that the Human Rights Act, West Virginia Code, Chapter 5, Article 11, is amended by the Legislature, these rules and regulations will automatically be amended to conform to such amendments.

Section 2. Definitions

All words defined in Chapter 5, Article 11, section 8 of the Act shall have the meanings therein ascribed to them for the purposes of these regulations. All other words shall have the meanings herein ascribed to them.

2.01. The term "Act" shall mean the West Virginia Human Rights Act.

2.02. The term "Chairperson" shall mean the Chairperson of the Human Rights Commission elected by the Commissioners.

2.03. The term "Commissioner" shall mean one of the duly appointed members of the Human Rights Commission.

2.04. The term "Commission's Attorney" shall mean the attorney assigned by the Attorney General to render legal services to the Commission.

2.05. The term "complaint" shall mean a written statement signed under oath before a notary public and filed with the Commission alleging an unlawful discriminatory practice.

2.06. The term "complainant" shall mean any individual, any organization which has an individual member claiming to be aggrieved by unlawful discrimination, the Commission, or the Attorney General filing a complaint with the Commission.

2.07. The term "Compliance Director" shall mean the member of the staff of the Human Rights Commission with the responsibility of overseeing the activities of the field investigators and the conciliators .

2.08. The term "Hearing Examiner" shall mean the attorney employed by the Commission for the conduct of the public hearings authorized by subdivision (d) (3), section eight of the Act.

2.09 The term "Investigating Commissioner" shall mean the Commissioner duly designated by the Commission to make investigation of a verified complaint filed with this Commission.

2.10. The term "panel" shall mean the Commission member and Hearing Examiner appointed under the provisions of subdivision (d) (3), section eight of the Act.

2.11. The term "party" or "parties" shall mean the complainant, the respondent, and any person authorized by the Commission to intervene in any

proceeding.

2.12. The term "respondent" shall mean any person against whom a complaint has been filed alleging an unlawful discriminatory practice within the meaning of the Act.

Section 3. Complaints

3.01. Who May File -

(a) Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice may make, sign and file with the Commission a verified complaint in writing.

(b) Any employer, whose employees, or some of them hinder or threaten to hinder compliance with the provisions of the Act may make, sign and file with the Commission a verified complaint requesting assistance by conciliation or other remedial action.

(c) The Commission or the Attorney General may make, sign and file a complaint whenever it or he has reason to believe that any persons has been engaged, or is engaging, or proposes to engage in an unlawful discriminatory practice.

(d) Any organization which has an individual member claiming to be aggrieved by an alleged unlawful discriminatory practice may make, sign and file with the Commission a verified complaint in writing.

(e) A complaint deferred to the Commission by the United States Equal Employment Opportunity Commission pursuant to the Civil Rights Act of 1964 or by the United States Department of Housing and Urban Development pursuant to the Civil Rights Act of 1968 shall be deemed filed with the Commission as of the date such complaint was received by the Equal Employment Opportunity Commission or the Department of Housing and Urban Development, provided the complaint substantially conforms to the requirements of the West Virginia Human Rights Act.

3.02. Complaint Assistance - Assistance in drafting and filing complaints shall be available to complainants at the Commission's offices or through the Commission and its professional staff.

3.03. Complaint Form - The complaint shall be in writing, the original being signed and verified before a notary public or other person duly authorized to administer oaths and take acknowledgements. The original and two additional copies of the complaint shall be filed with the Commission, provided that the Executive Director of the Commission may waive the furnishing of the aforesaid two additional copies. The complaint, where feasible, shall be upon forms prepared by the Commission, blanks of which shall be supplied by the Commission upon request. Notarial service shall be furnished without charge by the Commission.

3.04. Contents -

(a) Each complaint shall contain the following to the best information of the complainant:

(1) The full name and address of the complainant.

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

(3) A concise statement of the facts which complainant believes indicates an unlawful discriminatory practice.

(4) The date or dates of the alleged unlawful discriminatory practice; or if the alleged unlawful discriminatory practice is of a continuous nature, the dates between which said continuous acts are alleged to have occurred.

(b) Notwithstanding the provisions of paragraph (a) of this section, a complaint is deemed filed if the Commission receives from a person a written statement sufficiently precise to identify the parties and to describe generally the action or practice complained of.

(5) The notarized signature of the complainant.

3.05. Manner of Filing

(a) Where to File - Complaints may be filed at any Commission office either by personal delivery or mail.

(b) What Constitutes Filing - The complaint shall be deemed filed as of the date of:

(1) The postmark, if the complaint is filed by mail, or its receipt at the Commission's office if no postmark is visible;

(2) Receipt at the Commission's office if filed by personal delivery.

(c) Verification of Receipt of Complaint - When a complaint is received at the Commission office, the person accepting the complaint shall stamp the complaint with the date it was filed and initial the filing stamp.

(d) Timely Filing of Complaint -

(1) Ninety-day limitation - The complaint shall be filed within ninety (90) days after the occurrence of the alleged unlawful discriminatory practice or act.

(2) Continuing Wrong - If the alleged unlawful discriminatory practice or act is of a continuing nature, the date of the occurrence of said alleged unlawful practice shall be deemed to be any date subsequent to the commencement of the alleged unlawful practice up to and including the date upon which the unlawful practice has ceased.

(3) Memorandum of Complaint - Where the Commission is informed by an individual, claiming to be aggrieved, within three (3) days prior to the expiration of the ninety (90) day limitation of an alleged violation of the Act, the Commission may institute a Memorandum of Complaint. Such Memorandum of Complaint shall contain the essential

elements of a complaint as required by these regulations, excepting signature and verification by the complainant, and shall be signed, dated and verified before a notary public or other person duly authorized to administer oaths and take acknowledgements by the person drafting such Memorandum of Complaint. A complaint received by the Commission subsequant to and based upon said Memorandum of Complaint shall be deemed filed as of the date of Said Memorandum of Complaint.

(4) Timeliness of Federal Agency Deferrals - Any complaint alleging acts which are unlawful under the West Virginia Human Rights Act which are filed with Federal agencies which have deferral arrangements with the Commission, shall be deemed filed with the Commission on the same day as the complaint was received by such federal agency.

3.06. Amendments

(a) The Commission or the complainant may amend a complaint or any part thereof to cure technical defects or omissions, including but not limited to, failure to verify the complaint, to clarify and amplify allegations made therein, the correct name and address of the respondent, etc., and such amendments relate back to the original filing date; provided; however, an amendment alleging additional acts constituting unlawful discriminatory practices not related or growing out of the subject matter of the original complaint will be permitted only where at the date of the amendment the allegations could have been timely filed as a separate charge.

(b) A complaint may be amended as a matter or right prior to the issuance of a notice of hearing, and thereafter for good cause shown at the discretion of the Chairperson or, at the Chairperson's discretion, by the Hearing Examiner.

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3.07. Supplemental Complaints - Prior to the issuance of a notice of hearing, and upon request of the complainant, the Commission may upon such terms as are just, permit the complainant to file a supplemental complaint setting forth transactions, occurrences, or events which have happened since the date of the original complaint. The Commission shall have the right to file such supplemental complaint upon its own intitiative.

3.08. Notice to Respondent - Upon the filing of a complaint, supplemental complaint or amended complaint, the Commission shall furnish the respondent with a copy thereof by mail or in person as soon as investigation of said complaint has begun, or in any case within 365 days.

3.09. Withdrawal of Complaint -

(a) Upon request of the complainant, a complaint or any part thereof may be withdrawn, without prejudice to the complainant, on written consent as hereinafter set forth:

(1) If the request for withdrawal is made before the case has been noted for hearing, the written consent of the Investigating Commissioner shall be obtained.

(2) If request for withdrawal is made after the case has been noted for hearing, the written consent of the Chairperson shall be obtained.

(b) If request of the complainant for withdrawal of a complaint or any part thereof is granted, the Commission may initiate its own complaint based on the allegations of the withdrawn complaint. The filing date of such Commission-initiated complaint shall relate back to the original filing date of the withdrawn complaint.

(c) The respondent may submit written objection to the withdrawal of the complaint without prejudice.

3.10. Dismissal of Complaint - Where the allegations of a complaint on its face, or as amplified by the statements of the complainant to the Commission, disclose that the complaint is not timely filed or otherwise fails to state a valid claim for relief under the Act, the Commission my dismiss the complaint without further action. The Commission may also dismiss a complaint if the complainant fails or refuses to cooperate with the Commission or if the allegations of the complaint shall become moot. Complainant, and respondent where the complaint has been served, shall be notified in writing of the disposition of the complaint together with the reasons therefor and the complainant shall be notified of the right of administrative review as provided in Section 4.12.

Section 4. Investigation and Conciliation

4.01. Investigating Commissioner -

(a) After a complaint has been filed, the Executive Director shall designate one of the Commissioners, with the assistance of the Commission staff, to make a prompt investigation of the allegations of the complaint. The Commissioner so appointed to supervise the investigation shall be known as the Investigating Commissioner.

4.02. Investigation and Discovery -

(a) Any person against whom a complaint has been filed may submit to the Commission a written reply to the complaint. Such reply may contain a statement of the respondent's position and may present any evidence related to the subject matter of the complaint.

(b) The Commission may by interview or deposition take the testimony of any person, including a party, relating to the subject matter of a complaint.

(c) The Commission may order any person, including a party, to produce and permit the inspection and copying or photographing of any designated documents, papers, books, accounts, letters, photographs, or other tangible things, not privileged, which may constitute or contain evidence relating to the subject matter of a complaint.

(d) The Commission may order any party to complete a questionnaire or interrogatories relating to the subject matter of a complaint. Such questionnaire or interrogatories shall be completed and returned to the Commission within fifteen (15) days of receipt thereof. For good cause, the Compliance Director may grant an extension of time for the completion and return.

(e) To effectuate the purposes of the Act, whenever possible the Commission will obtain documentary evidence, statements, and testimony from witnesses, depositions, questionnaires and interrogatories by voluntary compliance with the request of the Commission for such discovery. However, if there is non-compliance with such voluntary requests for discovery, such actions shall, at the discretion of the Executive Director, result in the application of an adverse inference against the party to whom the request for discovery is propounded regarding all unanswered inquiries. If it is decided to apply such adverse inference against a party, such party must be notified of this action in writing. If the party subsequently comes forward with information to the satisfaction of the Executive Director, such adverse inference shall not be applied.

If there has been non-compliance with the request of the Commission for such discovery, or if in the opinion of the Investigating Commissioner and/or the Executive Director, the situation so warrants, upon the concurrence of at least five members of the Commission, the Investigating

Commissioner and/or the Executive Director may issue subpoenaes and subpoenaes duces tecum in the name of the Commission for the purpose of obtaining any information relevant to any lawful activity of the Commission. Such subpoenaes may be signed by the Chairperson, or his representative in his absence and/or the Executive Director.

4.03. Settlement During Investigation - If terms of settlement are agreed to between complainant and respondent, during the investigation of a complaint, the same shall be reduced to writing, signed by the parties and submitted to the Executive Director for approval in accordance with Section 4.05(e). If so approved, the Commission shall thereupon enter an order incorporating the terms of settlement and dismissing the complaint pursuant thereto without a finding on the merits of the complaint. Said order shall be served by the Commission on all parties.

4.04. Finding of No Probable Cause -

(a) The Investigating Commissioner shall authorize an order dismissing a complaint when he or she has determined after an investigation of the allegations of such complaint that there is no probable cause to believe that respondent has engaged in an unlawful discriminatory practice. A copy of an order dismissing a complaint shall be served upon the complainant within ten (10) days of such determination and upon the respondent within ten (10) days of the exhaustion of any administrative appeal of such order which the complainant may utilize. Such order shall be a final deceision of the Commission unless an appeal is taken as provided in Section 4.12.

(b) If the Investigating Commissioner rules that there is no probable cause to credit the allegations of an individual complainant as such allegations pertain to that individual, but also rules that there is probable cause to credit allegations or findings of a pattern and practice of discrimination by the respondent, no matter whether such pattern and practice was alleged by complaint or discovered through investigation, in

such case the individual complainant shall be dismissed from further proceedings by the Commission (pending any appeal taken under Section 4.12), the Commission shall be substituted in the complainant's place, and the complaint shall go forward in the name of the Commission as provided in Section 4.05 below.

4.05. Finding of Probable Cause: Conference, Conciliation and Persuasion -

(a) If the Investigating Commissioner finds that probable cause exists for crediting the allegations of the complaint, he and/or the Commission's staff shall immediately endeavor to eliminate the unlawful discriminatory practice by conference, conciliation and persuasion.

(b) Before commencing such conference and conciliation the Compliance Director shall enter into the record of the case progress a statement that formal conference and conciliation procedures are to be commenced based on the finding of probable cause to credit the allegations of the complaint.

(c) If the Investigating Commissioner and/or the Commission's staff succeed in endeavors at conference, conciliation and persuasion, the complainant shall be notified in writing of the terms of the proposed conciliation agreement and of complainant's right to apply to the Chairperson for reconsideration of such terms of conciliation in accordance with Section 4.12.

(d) If the terms which are reached at the conciliation conference are approved by the complainant and the respondent, the complainant and the respondent shall sign the conciliation agreement.

(e) The Executive Director shall approve the conciliation agreement. Upon approval of the conciliation agreement by the Executive Director the conciliation agreement shall become effective. If the Executive Director disapproves the proposed conciliation agreement, it shall be of no effect and a further conciliation conference or a public hearing shall be scheduled by the Executive Director as the Commission shall direct. Upon approval by the Executive Director, a conciliation agreement shall have the same force and effect and shall be subject to the same judicial review as a final order of the Commission.

4.06. Termination of Conciliation Proceedings Without the Consent of the Complainant - The Commission may, without the consent of the complainant, close the case if, in its opinion, a written agreement signed by the respondent and the Commission provides for the elimination of the unlawful discriminatory practice, the elimination of the effects of the unlawful discriminatory practice with respect to the complainant, and appropriate action as to effectuate the purposes of the Act.

4.07. Confidentiality of Conciliation Endeavors -

(a) Nothing that is said or done during and as a part of the endeavors of the Commission to eliminate unlawful discriminatory practices by methods of conference, conciliation, and persuasion may be made a matter of public information by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the parties concerned: PROVIDED, That the Commission may publish the terms of a conciliation agreement when the complaint has been adjusted without disclosing the identities of the parties involved.

(b) This section does not apply to such disclosures to the representatives of federal, state, and local agencies as may be appropriate

or necessary to the carrying out the Commission's functions under the Act: PROVIDED, That the Commission may refuse to make disclosures to any such agency which does not maintain the confidentiality of such endeavors in accord with this section or in any circumstance where the disclosures will not serve the purposes of the effective enforcement of the Act.

(c) The requirements of this section shall not be construed to limit the power of the Commission to conduct further investigations in preparation for a hearing or for other purposes in connection with its statutory duties nor shall they be construed to prohibit the use of evidence obtained through such investigations.

4.08. Refusal of Respondent to Cooperate in Conference and Conciliation - Should a respondent fail or refuse to confer with the Commission or its representative, or fail or refuse to make a good faith effort to resolve any dispute, the Commission may terminate its efforts to conciliate the dispute. In such event, the respondent shall be notified promptly, in writing, that such efforts have been unsuccessful and will not be resumed except upon the respondent's written request within the time specified in such notice.

4.09. Time Limitation for Conciliation - Failure to arrive at a satisfactory adjustment within forty-five (45) days after respondent is notified in writing of a finding of probable cause may constitute sufficient reason for the Commission to determine efforts at conference and conciliation to be a failure. For good cause, such determination may be made at an earlier date.

4.10. Satisfactory Adjustment - If the Commission's endeavors under conference, conciliation and persuasion shall be successful the Compliance Director shall mark the case "satisfactorily adjusted" and

notify the parties by mail of the terms of such disposition.

4.11. Violation of Conciliation Agreement - If the Commission determines that the respondent has violated or is violating the terms of settlement and adjustment, the Commission may take any action consistent with the Act which it deems appropriate.

4.12. Administrative Review by Chairperson -

(a) Request for Review -

(1) A complainant may apply to the Chairperson or the Chairperson's representative in the event that the Chairperson is unavailable or was the Investigating Commissioner, for an administrative review of the dismissal of his complaint by the Investigating Commissioner, or the terms of a proposed conciliation agreement approved by the Compliance Director. Requests for review shall be in writing and shall be filed at the main Commission office within ten (10) days from the date of receipt of the notice of dismissal of the complaint or of the terms of such proposed conciliation agreement.

(2) The complainant shall be given at least ten (10) days written notice of the time and place of the review hearing. The notice shall be given by personal delivery or by certified mail, return receipt requested, and shall advise the complainant that he must be present at the review hearing and may be accompanied by counsel: PROVIDED, That the complainant, at his discretion, may waive his right to appear at a review hearing and elect to submit all objections in writing to the Chairperson. Such written objections shall be filed with the Chairperson within ten (10) days of receipt of complainant's request for review or at such later time as the Chairperson may allow.

(3) If after having received proper notice, the complainant does not appear at the review hearing or fails to timely submit written objections, the complainant shall be deemed to have waived all rights to administrative review by the Chairperson unless it is shown to the satisfaction of the Chairperson that the failure to appear or to submit written objections timely was due to circumstances beyond the complainant's control.

(b) Procedures for Review -

(1) The Chairperson shall be provided with all information in the Commission file pertaining to the complaint under review. The Chairperson shall consider all such information in arriving at a decision.

(2) The Chairperson shall preside at the review hearing; PROVIDED, That if the Chairperson deems his or her attendance impractical due to time, date or location of the hearing, he or she may appoint a member of the Commission staff who has not participated in the initial investigation, decision, or proposed agreement of conciliation to represent him or her at such hearing, but all decisions and action growing out of or upon any such hearing shall be reserved for determination by the Chairperson.

(3) The complainant shall have the burden of showing that the dismissal of the complaint is arbitrary, capricious, or not in accordance with law.

(i) If the Chairperson determines that the finding of No Probable Cause should be reversed, the complaint shall be processed as though an original finding of Probable Cause had been made;

(ii) If the Chairperson determines that the original finding of No Probable Cause should be upheld, the complaint shall be dismissed and the complainant and the respondent shall be sent notice of

such finding by certified mail, return receipt requested.

(4) The complainant shall have the burden of showing that the proposed conciliation agreement fails to provide an adequate remedy.

(i) If the Chairperson determines that the proposed conciliation agreement is not satisfactory, the Chairperson shall inform the Investigating Commissioner which elements of the conciliation agreement are unsatisfactory and the Investigating Commissioner shall attempt further conciliation accordingly;

(ii) If the Chairperson determines that the proposed conciliation agreement is satisfactory, the complainant shall be so notified. The complainant shall have five (5) days after such notice to sign the original proposed conciliation agreement. If at the end of such time the complainant has not signed the conciliation agreement, the complaint may be dismissed or proceeded with in accordance with Section 4.06.

Section 5. Notice of Hearing

5.01. Issuance and Service of Notice of Public Hearing - After a finding of Probable Cause to credit the allegations of the complaint and in case of failure to eliminate the alleged unlawful discriminatory practice by conference, conciliation and persuasion, or in advance thereof, if in the judgment of the Commission circumstances so warrant, the Commission shall cause to be issued and served in the name of the Commission, a written notice of hearing, together with a copy of the verified complaint, as the same may have been amended. Service of said notice and complaint upon the respondent shall be in the manner provided by law for the service of summons in civil actions and shall be served at least thirty (30) days prior to the time set for the hearing. Service upon other parties shall be by personal delivery or certified mail, return receipt requested.

5.02. Contents of Notice of Public Hearing -

(a) The notice of hearing shall state the time and place of the hearing, inform the respondent that he may file a written, verified answer to the complaint, and that a failure to answer may be deemed an admission to the allegations of the complaint.

(b) The respondent shall be advised in writing of the right to appear in such hearing in person and/or be represented by an attorney. If an attorney has previously appeared on behalf of the respondent, a copy of the notice of hearing and complaint, as the same may have been amended, shall be furnished to said attorney.

(c) Notice of hearing shall contain the name of members of the hearing panel who shall conduct such hearing; or in lieu thereof, a statement that the public hearing will be conducted by a hearing panel to be designated subsequently by the Commission's chairperson or executive director.

5.03. Extension of Time - Upon application, Chairperson or Executive Director, for good cause shown, may extend the date on which a hearing has been set.

5.04. Copies of Pleadings to All Parties - Copies of all pleadings or papers filed in connection with a public hearing shall be sent to all parties and/or their attorneys, and the Hearing Examiner by the party filing such pleadings or papers.

Section 6. Answer

6.01. Time of Filing - The respondent against whom a verified complaint, as the same may have been amended, is filed and upon whom a notice of hearing and a copy of such complaint has been served, may file a written verified answer in person or through an attorney within ten days

from the service of such complaint and notice of hearing. Upon application in writing made to the Chairperson or Executive Director prior to the end of said ten-day period, Chairperson or Executive Director may, for good cause shown, extend the time in which the answer may be filed.

6.02. Place and Manner of Filing - The answer shall be filed in triplicate at the central office of the Commission. The filing shall be by personal delivery or by certified mail, return receipt requested.

6.03. Form of Answer -

(a) The answer shall be in writing, the original being signed and verified by the respondent or respondent's attorney. The answer shall contain the post office address of the respondent and if he is represented by an attorney, the name and mailing address of said attorney.

(b) The answer shall contain a general or specific denial of each and every allegation of the complaint controverted by the respondent or a denial of any knowledge or information thereof sufficient to form a belief and a statement of any matter constituting a defense.

(c) Any allegation in the complaint which is not denied or admitted in the answer, unless the respondent shall state in the answer that he is without knowledge or information sufficient to form a belief, may be deemed admitted.

(d) Any allegation of new matter contained in the answer shall be deemed denied by the complainant without the necessity of a reply being filed, unless otherwise ordered by the Chairperson.

6.04. Amendment of Answer - The answer or any part thereof may be amended as a matter or right at any time before the hearing and thereafter at the discretion of the Hearing Examiner on application duly made thereof. An original with two copies of the amended answer shall be filed with the Commission.

6.05. Amendment of Answer Upon Amendment of Complaint - In any case where a complaint has been amended, the respondent shall have the opportunity to amend his answer within such period as may be fixed by the Chairperson or Executive Director. The failure to amend shall not constitute an admission to those new allegations of fact contained in the amended complaint.

6.06. Failure to File Answer - The hearing panel may proceed, notwithstanding any failure of the respondent to file an answer within the time provided herein, to hold a hearing and may make its finding of fact and enter its order upon the testimony taken at the hearing.

6.07. Failure to Answer Set Aside - Upon application prior to hearing, the Chairperson may for good cause shown set aside a failure to answer. Upon application at the hearing, the Hearing Examiner may for good cause set aside a failure to answer.

6.08. Service of Answer - The Commission shall, within ten (10) days after the date of filing of an answer or amended answer, but in any case not less than five (5) days before the date set for hearing, serve a copy of such answer or amended answer on the complainant by personal delivery or certified mail, return receipt requested.

Section 7. Hearings

7.01. Public Hearing - All hearings of the Hearing Panel shall be open to the public except in extraordinary circumstances where the Commission shall determine, with the consent of the parties to the hearings, that substantial justice would not be effectuated thereby.

7.02. Place of Hearing - Hearings shall be held in the county where the respondent resides or transacts business, or, when agreed to by the parties, where the acts complained of occurred or any other mutually

agreed place. The place of the hearing will be designated by the Chairperson or the Executive Director.

7.03. Joinder - Two or more proceedings against the same respondent arising out of the same set of circumstances, or two or more proceedings by the same complainant against two or more respondents arising out of the same set of circumstances, may be consolidated by the Commission, in its discretion, for the purpose of hearing.

7.04. Hearing Panel -

(a) Hearings shall be conducted by one Hearing Commissioner and a Hearing Examiner designated by the Chairperson or the Executive Director. The Hearing Examiner shall preside and conduct the hearing; the Hearing Commissioner shall participate fully in such hearing.

(b) (1) Any person appointed to serve on a hearing panel who has any interest in the case at issue, or personally knows the complainant or respondent, shall disqualify himself to serve on the panel.

(2) Either party may file in good faith a motion alleging prejudice, which the hearing panel shall determine as part of the record and decision in the case prior to the taking of any evidence.

(c) No Commissioner who served as Investigating Commissioner shall participate in the hearing except as a witness, nor shall he participate in deliberations of the Commission in such case unless such Commissioner shall be required for a quorum of the Commission.

7.05. Replacement of Member of Hearing Panel - For good cause, unless prejudice be shown by a party, the Commission may replace a member of the Hearing Panel at any time.

7.06. Appearances -

(a) Complainant -

(1) The complainant shall be present at the hearing unless

excused by the Hearing Examiner because of extraordinary circumstances provided, that if the respondent shows that the complainant's absence will cause undue hardship to the presentation of his case, the respondent shall be entitled to a postponement.

(2) The complainant shall be permitted to appear either in person or by counsel to present oral testimony or other evidence and to examine and cross-examine witnesses.

(b) Respondent - The respondent may appear at the hearing with or without counsel, cross-examine witnesses and, if an answer has been filed or the default in answering has been set aside for good cause shown, may submit oral testimony and other evidence. Failure of a respondent to appear shall not prevent presentation of the case before the Hearing Panel or the entering of a final order.

(c) Commission - The case in support of the complaint shall be presented before the Hearing Panel by the Commission's attorney or agent who shall have full rights of cross-examination and rebuttal of any witness called by the respondent, complainant, or intervening party. With the consent of the Commission, the case in support of the complaint may be presented solely by the complainant's attorney.

(d) Interested Parties - Any person not initially joined in the proceeding shall be permitted to petition the Chairperson for intervention by counsel upon the filing of a motion within ten (10) days of the hearing which shall set forth the grounds for said intervention. A petition to intervene may be granted for such purposes and to such extent as the Chairperson shall determine.

7.07. Representation by an Attorney -

(a) Appearance - If any party designates an attorney-at-law to represent him before the Commission, such attorney shall file a notice of

appearance with the Commission. The filing of an answer executed or prepared by an attorney shall constitute a notice of appearance. An attorney-at-law who appears for a party to the proceeding at any stage therein shall be deemed to remain that party's attorney throughout the proceeding until:

(1) The party represented files with the Commission a written revocation of the attorney's authority; or

(2) The attorney files with the Commission a written statement of his withdrawal from the case; or

(3) The attorney states on the record at a Commission hearing that he is withdrawing from the case; or

(4) The party represented states on the record at a Commission hearing that he is revoking the attorney's authority; or

(5) The Commission receives notice of the attorney's death or disqualification.

(b) Notice to Attorneys - Copies of all written communications or notices in the matter directed to the party shall be sent either to the attorney alone or to both the party and his attorney.

(c) Effectiveness of Service - Service of any document or paper (except subpoenaes and subpoenaes duces tecum) in the matter on such attorney shall be deemed service on the party he represents provided, however, that the Commission may, in addition, serve any document or paper on the party such attorney represents.

7.08. Motions Before or After Hearing - All motions other than those made during a hearing shall be in writing and shall state briefly the order or relief applied for and the grounds for such motion. Any such motion shall be filed with the Chairperson and a copy thereof shall be served at the same time upon the Commission's attorney and other parties

to the hearing. Answering statements, if any, shall be filed in writing with the Chairperson within five (5) days (exclusive of Saturdays, Sundays and official State holidays) after service of the motion upon the party filing the answering statement, and a copy thereof shall be served within the same period upon the Commission's attorney and other parties to the hearing. Such motions shall be decided by the Chairperson or at the Chairperson's discretion, by the Hearing Examiner, without oral argument thereon, unless the Chairperson or Hearing Examiner, as appropriate, shall determine to hear oral argument, in which case he shall notify the parties of such fact and of the time and place for such oral argument.

7.09. Pre-hearing Conference -

(a) Purpose - A pre-hearing conference may be held at the discretion of the Hearing Examiner preparatory to any hearing. The pre-hearing conference shall be an informal proceeding conducted fairly and expeditiously by the Hearing Examiner for the prupose of considering:

(1) The simplification of issues;

(2) The necessity or desirability of amendments to the pleadings;

(3) The possibility of obtaining admissions of fact and documents which will avoid unnecessary proof;

(4) The limitation of the number of expert witnesses;

(5) Such other matters as may aid in the disposition of the hearing.

(b) Pre-hearing Statement - The Hearing Examiner shall make a written report which recites the action taken at the pre-hearing conference, the amendments allowed to the pleadings, and agreements made by the parties as to any of the matters considered which limit the issues before the Commission to those not disposed of by admission or agreement at the pre-

hearing conference. Such a statement shall be made a part of the record and when entered shall control the subsequent course of action, unless modified thereafter to prevent manifest injustice. The Hearing Examiner shall at the start of the hearing, after preliminary motions have been considered, read into the record his statement regarding the scope of the hearing as defined in the pre-hearing conference. Objections to the pre-hearing statement may be noted on the record for appeal purposes.

7.10. Submission of Documentary Evidence in Advance - When practicable, the Hearing Examiner may require:

(a) That all documentary evidence which is to be offered during the taking of evidence be submitted to the Commission and to the other parties to the proceeding sufficiently in advance of taking of evidence to permit study and preparation of cross-examination and rebuttal evidence;

(b) That documentary evidence not submitted in advance, as may be required by subdivision (a), be not received in evidence in the absence of a clear showing that the offering party had good cause for his failure to produce the evidence sooner;

(c) That the authenticity of all documents submitted in advance in a proceeding in which such submission is required, be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.

7.11. Subpoenaes -

(a) Issuance - Subject to the pertinent provisions of the Act, the Commission may issue subpoenaes and subpoenaes duces tecum either

at its own instance or upon written application of a party to the hearing whenever necessary to compel the attendance of witnesses and the introduction of books, records, correspondence, documents, papers or any other evidence which relates to any matter before the Commission. The issuance of such subpoenaes and subpoenaes duces tecum at the instance of a party other than the Commission shall depend upon a showing of the necessity therefor.

(b) Fees - Where a subpoena is issued at the instance of a party to the hearing other than the Commission, the cost of service, witness and mileage fee shall be borne by the party at whose request the subpoena is issued. Where the subpoena is issued at the instance of the Commission, the cost of such service shall be borne by the Commission. Such witness and mileage fees shall be the same as are paid witnesses in the courts of the State. All requests by parties other than the Commission for subpoenaes and subpoenaes duces tecum shall contain a statement acknowledging that the requesting party agrees to pay such fees.

(c) Failure to Obey Subpoena - Subpoenaes and subpoenaes duces tecum shall be enforced as provided in § 29A-5-1(b) of the West Virginia Code.

7.12. Procedure of Hearing -

(a) Subject to the provisions of these regulations, the Hearing Examiner shall have full authority and discretion to control the procedure of the hearing, to admit or exclude testimony or other evidence, and to rule upon all motions and objections except where ruling on such motion is expressly reserved to the Commission. The Hearing Examiner shall make full inquiry into all the facts in issue and shall obtain a full and complete record of all facts necessary for a fair determination of the issues.

(b) The Hearing Examiner may call and examine witnesses, direct the production of papers or other matter present in the hearing room, and introduce the same into the record of the proceeding. Subject to the provisions of the Act the Hearing Examiner may issue subpoenaes and subpoenaes duces tecum in furtherance of his duties and obligations.

7.13. Limitation on Hearing Examiner - On any question which would be determinative of the jurisdiction of the Commission or the culpability of any party, the Hearing Examiner may not rule but may only recommend proposed findings of law and fact.

7.14. Continuation and Adjournments - The Hearing Examiner 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.

7.15. Motions and Objections at Hearing - Motions made during a hearing and objections with respect to the conduct of a hearing, including objections to the introduction of evidence, shall be stated orally and shall, with the rulings of the Hearing Examiner, be included in the stenographic report of the hearing.

7.16. Waiver of Objections - Any objection not duly urged before the Hearing Examiner or Chairperson, as appropriate, shall be deemed waived unless the failure or neglect to urge such objection shall be excused for cause by the Hearing Examiner or Chairperson, as appropriate.

7.17. Separation of Witnesses - The Hearing Examiner may, within his discretion, or upon motion of a party, order the separation of witnesses.

7.18. Witnesses - No testimony shall be received from a witness except under oath or affirmation.

7.19. Rules of Evidence -

(a) Pursuant to § 29A-5-2 of the West Virginia Code, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the circuit courts of the State shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The Commission shall be bound by the rules of privilege recognized by law.

(b) When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The Hearing Examiner may in his discretion, either with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered. Any party to the hearing may vouch the record as to any excluded testimony or other evidence.

(c) All evidence, including papers, records, staff memoranda, and documents in possession of the Commission, of which it desires to abet itself, may be offered and made a part of the record of the hearing.

(d) Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

(e) Written stipulations of fact may be introduced in evidence if signed by the person sought to be bound thereby or by his attorney. Oral stipulations may be made in the record of hearing. The Commission expects the parties to stipulate evidence to the fullest extent to which complete or qualified agreement can be reached, including all material facts that are not or fairly should not be in dispute.

JAN 12 10 07 AM '76

OFFICE OF SECRETARY OF STATE STATE OF WEST VIRGINIA

STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

CHARLESTON, WEST VIRGINIA 25305
TELEPHONE 348-2616

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JOHN M. DINEEN
Charleston

ARCH A. MOORE, JR.
Governor
HOWARD D. KENNEY
Executive Director

January 7, 1976

Honorable James R. McCartney
Secretary of State
Building 1, Room W-151
State Capitol Building
Charleston, West Virginia 25305

Dear Mr. McCartney:

You will find enclosed a corrected copy of the Rules and Regulations of the West Virginia Human Rights Commission previously submitted to your office.

Changes include typographical errors to Sections 3.01(d)(3), 3.04(a)(2), 3.06, 4.04(b), and 6.07.

If you have any questions, please do not hesitate to contact me.

Sincerely yours,

Howard D. Kenney

Howard D. Kenney
Executive Director

HDK/elm

Enclosure 1

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE JAN 12 1976