

29 FAR 35 | 8/29/2003 | NOTICE OF PROPOSED RULES

DEPARTMENT DEPARTMENT OF MANAGEMENT SERVICES

AGENCY FLORIDA COMMISSION ON HUMAN RELATIONS

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MEETING DATE Wednesday, September 24, 2003

MEETING TIME 9:00:00

RULE NO 60Y-7.004

TITLE Investigation of Complaints

**SPECIFIC
AUTHORITY** 120.53, 760.06(12), 760.31(5) FS.

**LAW
IMPLEMENTED** 120.53, 760.20-760.37 FS.

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APPROVER Cecil Howard, Executive Director

PROPOSAL DATE 8/18/2003

PUBLISH DATE 8/1/2003

Purpose

The rule chapter provides for Commission proceedings to receive, investigate and act upon complaints of discriminatory housing practices.

Summary

Amendments have updated rule sections to conform to current procedures and statutory requirements, including the adoption of the Uniform Rules of Procedure, and clarifying when a complaint is filed, and under what conditions, amendments, withdrawals and dismissals of complaints may be made.

Regulatory Costs

None. Any person who wishes to provide information regarding the statement of estimated regulatory cost, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

Notification

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

FULL TEXT OF THE PROPOSED RULE

60Y-7.004 Investigation of Complaints.

(1)

(a) By whom. The investigation of the complaints shall be made by the Office of ~~Community Relations and~~ Housing Investigations or by any other person ~~Commission employee~~ designated by the Executive Director. The Executive Director may utilize services of other public agencies, state, local or federal, which are charged with the administration of fair housing practice laws, and may utilize the information gathered by such.

(b) Investigatory proceedings shall commence before the end of the 30th day after receipt of the complaint.

(2) Statement of Complainant. During the course of an investigation, the complainant may be required to provide a statement which includes:

(a) A statement of each particular harm which the aggrieved person has suffered and the date on which each harm occurred.

(b) For each harm, a statement specifying the act, policy or practice which is alleged to be unlawful.

(c) For each act, policy or practice alleged to have harmed the aggrieved person, a statement of the facts which lead the complainant to believe that the act, policy or practice is discriminatory.

(3) Requests for Information. During the course of an investigation, the Office of ~~Community Relations~~ and Housing Investigations may request of any person information concerning the facts and circumstances of the complaint. Requests for information may be made in the following manner:

(a) Oral interviews;

(b) Written interrogatories;

(c) Requests for production of documents;

(d) Requests for entry upon land for inspection and other purposes;

(e) Requests for a written statement or affidavit.

(4) Failure to Cooperate - Complainant. Where the complainant fails to provide a necessary statement, fails or refuses to appear or be available for interviews or meetings, fails or refuses to provide necessary information requested by the Office of ~~Community Relations~~ and Housing Investigations pursuant to this section or otherwise refuses to cooperate to the extent that the Office of Community Relations and Housing Investigations is unable to resolve the complaint, and where after notice the complainant has failed to duly respond to the Office of ~~Community Relations~~ and Housing Investigations, the Executive Director may dismiss the complaint based upon complainant's failure to cooperate.

(5) Subpoena. The Commission and the respondent may compel access to or the production of documents or the appearance of persons under the following conditions:

(a) The Executive Director may issue subpoenas to compel access to or the production of documents or the appearance of such persons as are reasonably necessary for the investigation.

(b) The respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the Commission to the same extent and subject to the same limitations as subpoenas issued by the Commission on its own initiative.

(c) Each subpoena shall state the name and address of the issuer, identify the person subpoenaed, and identify the person to whom and the place, date and time at which it is returnable.

(d) Within 5 days after service of a subpoena upon any person, such person may petition the Executive Director

to revoke or modify the subpoena. The Executive Director shall grant the petition if he finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, or that compliance would be unduly onerous or for other good reason.

(e) In case of refusal to obey a subpoena, the Executive Director or the person at whose request the subpoena was issued may petition for its enforcement in the circuit court for the county in which the person to whom the subpoena was addressed resides, was served or transacts business.

~~(f) Witnesses summoned by subpoena of the Commission shall be entitled to the same witness and mileage fees as are witnesses in proceedings in court. Fees payable to a witness summoned by a subpoena issued at the request of a respondent shall be paid by the respondent.~~

(6) Access to Files During Investigation. Information obtained during the investigation of a complaint shall be disclosed only to the complainant, respondent or their authorized representative, or to a witness, only when disclosure is deemed necessary for the investigation or for securing appropriate disposition of the complaint.

(7) Negotiated Settlement. During the mediation and/or investigation processes, the Commission ~~Office of Community Relations and Housing Investigations~~ shall endeavor to encourage the complainant and the respondent to settle the complaint on mutually agreeable terms. If the settlement is achieved by a Negotiated Settlement Agreement, its terms shall be reduced to writing and signed and dated by the complainant and the respondent. If a settlement is achieved as a Withdrawal with Settlement, only the complainant need sign and date. A copy of the agreement shall be filed with the Clerk. A complaint which has been settled may be dismissed by the Executive Director upon such terms and at such time as may be provided in the written agreement subject to compliance.

(8)

(a) Within 100 days after receiving a complaint or within 100 days after the expiration of any period of reference under Rule 60Y-7.003, F.A.C., the Commission shall investigate the complaint and give notice in writing to the person aggrieved whether the investigatory determination is "No Cause" or "Cause." ~~If the investigatory determination is "Cause," the Commission~~

~~shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion.~~

(b) If the Commission is unable to complete its investigation within 100 days, it shall notify the complainant and respondent in writing of the reasons for not doing so.

(9) If the investigatory determination is "No Cause," the Executive Director shall issue a "Notice of Determination (No Cause)" and serve it upon the complainant and the respondent. The "Notice of Determination (No Cause)" shall state that the complainant may request an administrative hearing ~~be conducted on the claim,~~ by filing a Petition for Relief from a Discriminatory Housing Practice within 30 days of service of the notice. A form, Petition for Relief, in blank, shall be provided to the complainant at the time of service of the "Notice of Determination (No Cause)".

(10) If the investigatory determination is "Cause," the Executive Director shall issue a "Notice of Determination (Cause)" and serve it upon the complainant and the respondent. The notice shall inform the complainant of the options and mandated times for action outlined in paragraph 60Y-7.001(8)(b). Concurrently, the Commission may also attempt to conciliate the case pursuant to Rule 60Y-7.005, F.A.C.

(11)~~(10)~~ The Commission will make final administrative disposition of a complaint within 100 days ~~one year~~ of the date of receipt of the complaint, unless it is impracticable to do so. If the Commission is unable to do so, it shall notify the complainant and respondent in writing of the reasons for not doing so.

Specific Authority 120.53, 760.31(5) FS. Law Implemented 120.53, 760.34 FS. History-New 1-25-90, Amended 11-20-91, Formerly 22T-21.004, Amended 11-18-92, _____.