

## **104 KAR 1:020. Administrative proceeding.**

RELATES TO: KRS 13B.010, 344.010-344.500, 344.600-344.680, 344.990

STATUTORY AUTHORITY: KRS 344.180(3), 344.190(8), (9), (10), (14)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 344.180 and 344.190 require the commission to receive, investigate, conciliate, and hold hearings on complaints alleging unlawful discrimination. This administrative regulation establishes procedures for the filing of complaints alleging unlawful discrimination and administrative hearings relating thereto.

### Section 1. Definitions.

- (1) "Commission" means the Kentucky Commission on Human Rights established by KRS 344.150.
- (2) "EEOC" means the United States Equal Employment Opportunity Commission.
- (3) "HUD" means the United States Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity.

### Section 2. Complaint.

#### (1) Filing.

- (a) Assistance in filing complaints shall be available to complainants at the commission, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.
- (b) Complainants may provide information to be contained in a complaint by telephone to the commission.
- (c) The commission shall reduce information received by telephone to writing on the appropriate complaint form. The commission may send the form to the complainant to be signed unless the information fails to establish a violation of KRS 344.010 to 344.500, 344.600 to 344.680, and 344.990.
- (d) Upon the receipt of a communication from the EEOC or the HUD that a complaint has been submitted, the executive director or a designated commission staff member:
  1. May issue a complaint in writing; and
  2. Attach materials transmitted from the federal government.

#### (2) Complaint form. The complaint:

- (a) The commission shall provide a complainant with an appropriate complaint form.
- (b) A complaint may be filed on one (1) of the following forms:
  1. For employment, housing, public accommodation, or financial transactions complaints, "Complaint of Discrimination" form;
  2. For housing discrimination complaints dual-filed with the commission and HUD, "Housing Discrimination Complaint" form; or
  3. For employment discrimination complaints dual-filed with the commission and EEOC, "Charge of Discrimination" form.
- (c) A complaint shall be signed and affirmed or sworn before a notary public or other person authorized by law to administer oaths and take acknowledgments. Notarial service shall be furnished without charge by the commission.

#### (3) Place of filing. A complaint shall be filed with the commission at its office in Louisville as provided in subsection (4) of this section.

#### (4) Manner of filing.

- (a) The complaint may be filed by personal delivery or mail to the commission's office in Louisville.
- (b) A complaint may be delivered to:
  1. A commissioner;
  2. A member of the commission's staff; or
  3. Other commission office.

- (c) The person or office with whom a complaint is filed shall timely file the complaint at the commission's Louisville office.
- (5) Amendment of complaint.
- (a) The commission, the presiding hearing officer, or the complainant shall have the power reasonably and fairly to amend a complaint.
- (b) Amendments may include amendments to:
1. Cure technical defects or omissions;
  2. Amplify the allegations in the complaint; or
  3. The joinder of additional or substitute respondents.
- (c)
1. If a complaint is amended, the respondent may request in writing that the hearing be postponed.
  2. A hearing shall not be postponed for more than ten (10) days after the original hearing date.
- (6) Withdrawal of complaint. A complainant may withdraw the complaint, or any part of the complaint, without prejudice if the complainant:
- (a) Files a written request stating the reasons for withdrawal; and
- (b) Written consent is obtained from the:
1. Executive director, if the request is made before the issuance of a notice of hearing; or
  2. Chairperson of the commission or presiding officer, if the request is made after the issuance of a notice of hearing.

### Section 3. Notice of Hearing.

- (1) The executive director shall schedule a hearing and report to the chairperson.
- (2) Notice of hearing. If a party is represented by an attorney, a copy of the notice of hearing, complaint, documents, and amendments to documents, shall be furnished to the attorney.
- (3) Place of hearing.
- (a) A hearing shall be held at an office of the commission or other place designated by the commission.
- (b) A complainant or respondent may request in writing that the location of a hearing be changed.

### Section 4. Answer to Complaint.

- (1) Filing of answer.
- (a) The respondent or the respondent's attorney of record shall answer the complaint or amended complaint.
- (b) The answer shall be:
1. In writing;
  2. Signed by the respondent or respondent's attorney of record; and
  3. Filed with two (2) copies at the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.
- (2) Content. The answer shall:
- (a) Admit or deny the allegations in the complaint;
- (b) State in concise, plain language, the defenses to each claim asserted;
- (c) Specifically state:
1. A defense of lack of jurisdiction; and
  2. A brief statement of the facts upon which the defense is based;
- (d) Specifically state whether the respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation or claim;
- (e) Contain the mailing address of the:

1. Respondent; and
2. If applicable, respondent's attorney of record.
- (3) Failure to deny or admit. Failure to state in respondent's answer that respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation shall be deemed an admission of the allegation.
- (4) Manner of filing. The answer shall be filed by:
  - (a) Registered or certified mail addressed to the office of the commission in Louisville; or
  - (b) Delivery to the office.
- (5) Defense and new matter. Allegation of new matter contained in the answer shall be deemed denied.
- (6) Extension of time for filing. Upon application, the chairperson or the presiding hearing officer may for good cause shown extend the time within which an answer may be filed.
- (7) Amendments of answer. An original amended answer with two (2) copies shall be filed with the commission as provided in subsection (4) of this section.

#### Section 5. Hearing Procedures.

- (1) Appearances. The complainant or the party on whose behalf the complaint was filed shall appear at the hearing to testify.
- (2) Who shall conduct.
  - (a) Hearings shall be conducted before one (1) or more hearing officers appointed by the chairperson.
  - (b) The hearing officer may be a commissioner or may be a person appointed by the chair.
  - (c) If more than one (1) hearing officer is appointed, the chairperson shall designate one (1) of them to act as presiding hearing officer.
- (3) Joinder. Two (2) or more proceedings may be joined by the commission.
- (4) Stipulations. The parties may file a stipulation as to any relevant matter. A stipulation shall not preclude the offering of additional evidence by any party.
- (5) Continuation and adjournments.
  - (a) A hearing officer may:
    1. Continue a hearing from day to day;
    2. Adjourn a hearing to a later date or to a different place.
  - (b) A hearing officer may continue or adjourn a hearing by:
    1. Announcement at the hearing; or
    2. Other notice to all parties.
- (6) Oral arguments and briefs. The presiding hearing officer shall permit the parties, their attorneys, or the members of the commission's staff presenting the case in support of the complaint, to present oral argument and to file briefs.
- (7) Improper conduct. The presiding hearing officer may exclude from the hearing room or from further participation in the proceeding a person who engages in improper conduct before the hearing officer.
- (8) Waiver of hearing. If a hearing has not been held, or if findings of fact or conclusions of law have not been made, an order may be entered if:
  - (a) The respondent has consented in writing; and
  - (b) Written notice has been given to all parties.

#### Section 6. Issuance of Subpoena.

- (1) If a subpoena or subpoena duces tecum is issued at the request of a party to a hearing or other proceeding, the cost of service, witness and mileage fees shall be borne by the party who requested the subpoena.

(2) If a subpoena or subpoena duces tecum is issued by order of a commissioner, hearing officer or the executive director, the cost of service, witness, and mileage fees shall be borne by the commission.

Section 7. Filing of Orders. An order issued by the commission after a hearing shall be filed in the commission's office in Louisville.

Section 8. Certification. The chairperson or the executive director shall certify documents or records that are a part of the files and records of the commission.

Section 9. Material Incorporated by Reference.

(1) The following material is incorporated by reference:

- (a) "Complaint of Discrimination Form (April 1996)";
- (b) "How to File a Complaint of Discrimination (April 1996)";
- (c) "Housing Discrimination Complaint Form (HUD 903) (February 1991)";
- (d) "Charge of Discrimination (EEOC 5) (June 1992)"; and
- (e) "Request for Reconsideration (April 1996)".

(2) This material which is made available upon request to persons with disabilities in alternative formats may be inspected, copied or obtained:

(a) At the offices of the Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202; or

(b) Requested at any time by calling:

1. (502) 595-4024 (voice);
2. (800) 295-5566;
3. (502) 595-4084, (TTY), for the speech and hearing impaired;
4. Kentucky Relay Service, (800) 648-6056 (TTY), (800) 648-6057 (voice).

(c) Material may be inspected, copied, or obtained, 8 a.m. to 4:30 p.m., Monday through Friday.

(HR-2; 1 Ky.R. 235; eff. 1-8-1975; 2863; 3179; eff. 4-14-1992; 19 Ky.R. 2079; 2389; eff. 5-10-1993; 23 Ky.R. 166; 1391; eff. 9-11-1996; TAm eff. 9-12-2018; Crt eff. 1-29-2020.)