

Chapter 2: PROCEDURAL RULE

DESCRIPTION: The following rule describes the process by which complaints of discrimination will be filed, processed, and considered by the Maine Human Rights Commission, with the exception of complaints alleging unlawful education discrimination, which are governed by this rule and by Chapter 4-A.

2.01 DEFINITIONS

All terms used in these regulations, unless the context otherwise indicates, shall have the same definition as in the Maine Human Rights Act, 5 M.R.S.A. §§ 4551 *et seq.* (the “Act” or “MHRA”).

2.02 COMPLAINTS

A. Who may file

- (1) Any aggrieved person may file a complaint with the Maine Human Rights Commission (the “Commission”).
- (2) Any employee of the Commission may file a complaint with the Commission alleging an act or practice of unlawful discrimination.
- (3) If the aggrieved person is a minor child at the time of filing, the named party in a complaint must be the child’s parent or legal guardian, filing on behalf of the minor child, and the child’s name will remain confidential until the child reaches the age of majority. If the aggrieved person reaches the age of majority while the complaint is pending at the Commission, the investigation will continue with the aggrieved person proceeding on their own behalf without requiring amendment of the complaint.

B. Contents

A complaint should briefly set forth the facts and circumstances surrounding the alleged discrimination.

C. When to file

A complaint of discrimination must be filed with the Commission not more than 300 days after the act of alleged discrimination occurred.

D. Where to file

Complaints must be filed at the office of the Maine Human Rights Commission, 51 State House Station, Augusta, Maine 04333-0051; complaints filed with the Equal Employment Opportunity Commission (“EEOC”) and the United States Department of Housing and Urban Development (“HUD”) pursuant to work sharing agreements between the Commission and EEOC and HUD shall be deemed filed with the Commission on the date of filing with EEOC or HUD.

E. How to file

A complaint may be filed by filling out a form provided by the Commission or by EEOC or HUD pursuant to work sharing agreements between the Commission and EEOC or HUD. Complaints must be sworn to under oath by the aggrieved person (hereinafter, the “Complainant”) before a Notary Public or other person authorized by law to administer oaths, or before a representative of the EEOC or HUD pursuant to work sharing agreements signed between the Commission and the EEOC and HUD.

Upon request, Commission staff will assist in the preparation of the necessary complaint forms as follows. Aggrieved persons may provide information by mail, telephone, or email, or through the Intake Questionnaire on the Commission’s website (www.maine.gov/mhrc). Commission staff may request that intake forms be prepared and submitted. If the information received alleges a violation of the Act, Commission staff will reduce the information to writing on the appropriate complaint form and send it to the aggrieved person to be notarized and filed with the Commission. If the information received does not appear to allege a violation of the Act, the Commission will notify the aggrieved party and provide them with a blank complaint form, which the aggrieved party may prepare and file without the Commission’s assistance.

A signed, notarized complaint may be filed in person at the Commission’s office in Augusta, by mail, or electronically (by email or via a portal system if adopted by the Commission). If the complaint is filed electronically, it will be considered filed on the business day when it is received (so long as it is received during Commission business hours). If the complainant is initially filed electronically, the Complainant must promptly file an original version of the signed, notarized complaint in person or by mail. If the complaint is not received by the Commission during its business hours, the complaint will be considered filed on the next business day.

F. Amendment of complaints

Complaints may be amended to cure technical defects or omissions, including failure to swear to the complaint under oath before a Notary Public, or to clarify and amplify allegations made therein. Such amendments and amendments

alleging additional acts that constitute unlawful practices related to or growing out of the subject matter of the original complaint will relate back to the date the complaint was first received. Amendments to complaints must be sworn to under oath by the Complainant.

Amendments otherwise allowable but made without sufficient time to allow the Commission's investigator to conduct a timely preliminary investigation prior to the expiration of the Commission's jurisdiction shall be accepted for filing, and, absent extraordinary circumstances, shall be included in the final Investigator's Report with a recommendation of "no reasonable grounds".

G. **Withdrawal of complaints**

- (1) A complaint may be withdrawn at any time, by written request, prior to the issuance of a statement of finding by the Commission, by the ~~person who originally filed it~~ Complainant provided, however, that where the investigation and processing of a complaint has been completed and an Investigator's Report issued prior to the receipt of a written request for withdrawal, withdrawal is subject to Commission approval. Upon notification or approval of withdrawal, the Commission shall cease its investigation.
- (2) If Complainant makes a request for withdrawal after an Investigator's Report has been issued, the Commission's Executive Director will present the request to the Commission at a public proceeding along with their recommendation as to whether the request should be granted or not. If the request is not granted, the case will proceed to be decided by the Commission.
- (2) Withdrawal of an individual complaint will not, ~~however,~~ preclude the investigation and processing of any complaint filed by any employee or member of the Commission, which alleges the same acts of discrimination.

H. **Administrative dismissal**

The Commission's Executive Director may, in ~~her/his~~ their discretion, administratively dismiss complaints of discrimination for ~~such~~ such reasons including, but not limited to, the following as:

- (1) lack of jurisdiction;
- (2) failure to substantiate the complaint of discrimination;
- (3) failure to file a complaint of discrimination within 300 days of the date of alleged discrimination;

- (4) failure by complainant to proceed or cooperate with the investigation, including (but not limited to) a complaining party's repeated or egregious failures to abide by the Commission's confidentiality requirements;
- (5) bankruptcy filing by the person or persons against whom the complaint has been filed (hereinafter, the Respondent); or
- (6) death of Complainant, if no person with legal authority to continue the case appears on behalf of themselves or the Complainant's estate within a reasonable time.

Immediately following administrative dismissal, the Commission shall notify the complainant and the respondent of its action, and shall inform the complainant of her/his right to proceed pursuant to 5 M.R.S.A. §4621. An administrative dismissal operates as an order of dismissal and has the same effect as a finding by the Commission that no reasonable grounds exist to believe that unlawful discrimination has occurred, except that an administrative dismissal pursuant to paragraph (3) does not entitle the complainant to an award of attorney's fees, civil penal damages or compensatory and punitive damages.

Requests for Reconsideration: Requests for reconsideration of the Executive Director's decision to administratively dismiss a complaint may be made only by a party to the complaint or by a member of the Commission's staff. Requests for reconsideration shall be made only where there has been a significant factual or legal error or omission, or to bring forth new information that could not have been presented previously. All requests for reconsideration shall be subject to the discretion of the Executive Director.

I. **Notice of Right to Sue**

A right to sue letter may be requested by a complainant, in writing, 180 days or more after the filing of a complaint with the Commission. If the Commission has not filed a civil action in the case or has not entered into a conciliation agreement in the case, the Commission's Executive Director or ~~her/his~~ their designee shall issue a right-to-sue letter, provided, however, that where the investigation and processing of the complaint have been completed and an Investigator's Report issued prior to the receipt of a written request for a right-to-sue letter, the issuance of the right-to-sue letter is subject to the Commission's approval. If Complainant makes a request for a right-to-sue letter after an Investigator's Report has been issued, the Commission's Executive Director will present the request to the Commission at a public proceeding along with their recommendation as to whether the request should be granted or not. If the request is not granted, the case will proceed to be decided by the Commission. Upon issuance of the right-to-sue letter, the Commission shall end its investigation.

J. Conflict of Interest

- (1) As used in the subsection, "conflict of interest" means that:
 - a) a Commissioner or a member of their immediate family (used herein to include a Commissioner's spouse/domestic partner, parent, grandparent, sibling, child, and/or grandchild, including step-, in-law, and adoptive/foster relationships) has an adverse or pecuniary interest as defined by 5 M.R.S.A. §18; or
 - b) a Commissioner or a member of their immediate family is a complainant or respondent in a case under investigation or is a witness involved in the investigation; or
 - c) a Commissioner or a member of their immediate family is an employee or member of an entity that is a party in a case under investigation by the Commission, or an employee or member of an entity operating as an advocate for a party appearing before the Commission.
- (2) The Commission will not provide any information to a Commissioner ~~with a conflict of interest as defined in (1)(b) above~~ who is a party to a complaint which it would not provide to any other respondent or complainant. If a Commissioner has a conflict of interest other than as a party to a complaint, that Commissioner will be provided only with information that would be provided to a member of the public upon request.
- (3) All communications with the Commission made by the Commissioner with the conflict of interest relative to the merits of the case prior to the conclusion of the investigation as defined in 5 M.R.S.A. §4612(1)(B), will be directed to the investigator assigned to the case, not to the Executive Director, the Commission Counsel, or any other Commissioner. All such communications will be noted in the case file. Unless the Commissioner with the conflict of interest is a party to the case, they shall not make any statements or suggestions regarding the outcome of the case to the investigator.
- (4) Any Commissioner who has a conflict of interest in a case before the Commission will excuse ~~himself or herself~~ themselves from the Commission proceeding decision affecting that case pursuant to Rules 2.07 and 2.08.
- (5) A Commissioner who has no conflict of interest that falls within the definition provided above, but feels that they may be unable to decide a

case fairly or who may be perceived as having a conflict of interest, may choose to excuse themselves from the Commission decision affecting that case, upon their own request, upon request of a party to the case, or upon recommendation by Commission Counsel or the Executive Director.

2.03 NOTIFICATION

Within ~~21~~40 days after a complaint has been pre-screened, notarized, filed, and assigned a case number, the ~~party against whom the complaint has been filed, referred to as r~~ Respondent, will be notified and provided with a copy of the complaint. The ~~e~~ Complainant will be provided with a copy of the notification. The notice will advise the parties of time limits applicable to complaint processing under this chapter and of the procedural rights and obligations of the parties under the MHRA and this chapter; the complainant's right to commence a civil action in the Superior Court; and that it is unlawful to discriminate against any person because the person made a complaint or testified, assisted, or participated in an investigation, proceeding, or hearing under the Act. If the complaint alleges violation of the MHRA that relates to a disability, the medical/disability information may be redacted from the complaint sent with notification to the Respondent; once the Respondent provides a signed agreement to maintain information it learns through the Commission process as confidential, the Commission will upon request send an unredacted copy of the complaint to the Respondent.

2.04 EARLY RESOLUTION SETTLEMENT

- A. Subsequent to notification and separate from the investigation of the allegations in the complaint, the Commission's ~~Compliance Manager~~ Executive Director or ~~her/his~~ their designee will provide an opportunity to the parties for discussion of settlement. This may but is not required to include an opportunity for the parties to participate in a third-party neutral mediation program established by the Commission. Such a third-party neutral mediation program may permit one or more parties to a complaint to agree to pay the costs of mediation. The Commission may approve the receipt of funds from any source for the purposes of implementing and administering a third-party neutral mediation program.
- (1) Participation in the third-party neutral mediation program will not operate to toll any deadline associated with the investigation of the complaint.
 - (2) Complaints will not be referred to the third-party mediation program until all of the initial documents (complaint, response from respondent, complainant's reply to respondent's response) have been received by the Commission.
- B. Evidence of conduct or statements made in settlement negotiations, mediation, settlement offers, and any final agreement reached prior to a determination by the Commission, are confidential and may not be disclosed without the written

consent of the parties, or used as evidence in any subsequent proceeding, except in an action for breach of the agreement. Notwithstanding this provision, the Commission and its employees have discretion to disclose such information to a party as is reasonably necessary to facilitate settlement.

- C. Prior to a determination by the Commission of whether there are reasonable grounds to believe that unlawful discrimination has occurred, if the matter is resolved to the mutual satisfaction of the parties and to the satisfaction of the Commission's Executive Director or ~~her/his~~ their designee, the Executive Director or ~~her/his~~ their designee shall have the authority to sign any settlement agreement on behalf of the Commission, together with the parties. When the Commission agrees in any negotiated settlement not to process that complaint further, the Commission's agreement shall be in consideration for the promises made by the other parties to the agreement. The complaint will be dismissed by the Commission's Executive Director or ~~her/his~~ their designee upon ascertainment that the terms of settlement have been met. In order to facilitate the ascertainment that the terms of settlement have been met, the parties shall provide the terms of any agreement between them to the Executive Director or their designee upon request. Any information provided to the Executive Director for this purpose shall remain confidential, except that settlement information may be reported to the Commission and to EEOC or HUD if the case is dual-filed. Failure to provide the required information may result in a delay in the dismissal of the complaint.
- D. In the alternative, the Commission's ~~Compliance Manager~~ Executive Director or ~~her/his~~ their designee or a mediator assigned pursuant to a third-party neutral mediation program established by the Commission may facilitate a settlement between the parties resulting in the withdrawal of the complaint pursuant to 2.02(G). It is a condition of the use of the Commission's third-party neutral mediation program that the terms of any agreement reached by the parties, whether at the mediation or subsequently, will be provided to the Executive Director or their designee. Any information provided to the Executive Director for this purpose shall remain confidential, except that settlement information may be reported to the Commission and to EEOC or HUD if the case is dual-filed.
- E. The Commission specifically delegates to its Executive Director and its Commission Counsel the authority to approve and execute predetermination settlement agreements in the name of the Commission.

2.05 INVESTIGATION

- A. After a complaint has been pre-screened, notarized, filed, and assigned a case number, a Commission investigator will conduct such preliminary and impartial investigation as is necessary. An investigation may involve fact-finding meetings, conferences, and interviews with the complainant, the respondent, and any other

persons whose statement may provide a source of evidence, but is not required to involve any particular investigative method. The investigator may record, by mechanical, electronic or other means, all statements by all persons involved. If the investigator calls for a ~~fact-finding meeting or an issues and resolutions meeting or conference,~~ the parties shall be given reasonable advanced notice in advance of the meeting.

- B. Any submission made by a party (or their attorney/representative) to the Commission must also be provided to all other parties to the case (or to their attorneys/representatives). Submissions provided by a party to another party shall be kept confidential during the course of the investigation, pursuant to section G(2), below. The parties should attempt to agree on a method for exchanging documents; a party making an electronic submission to the Commission must confirm whether the other parties are able to receive electronic submissions, and must send a physical copy to any party unable to do so. All submissions to the Commission shall contain a statement affirming that the submission was sent simultaneously to all other parties, and identifying the means of production to each of them.
- C. The Commission's investigator shall have access at all reasonable times to premises, records, documents, individuals and other evidence or possible sources of evidence and may examine, record and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation. The Commission's investigators are hereby delegated the authority to administer oaths. The investigator shall maintain a written record of all interviews. The parties shall have the right to review the interview record, but the timing of such review shall be subject to the investigator's discretion.
- D. Any party, witness, or attorney who makes an audio and/or visual recording of any portion of the Commission's investigation shall not do so without first notifying the Commission's investigator. If such a recording is made, the person making it must provide the Commission with a copy of the entire recording, or the recording may not be introduced into the investigation.
- E. Documents, records, files or other possible sources of evidence shall be produced within the time specified by a Commission representative's written request for their production, unless the person possessing them shows cause to the Commission's representative that production within the time specified would impose an unjustifiable burden. Excessive delay or failure to produce the requested materials may result in the issuance of a subpoena by the Commission for their production. In the alternative, or in the event that the party still fails to provide the requested information after it is subpoenaed, the investigator may draw an adverse inference against the party which refuses to produce requested information.

Any information submitted to the Commission after the final deadline for submissions, as set by the investigator, shall be considered by the investigator only to the extent that it appears to the investigator that the late-submitted information could change the investigator's recommended finding(s) or it appears to Commission Counsel that the late-submitted information changes the legal sufficiency of the report.

F. **Subpoena power**

- (1) **Form.** Subpoenas shall be issued in the name of the Maine Human Rights Commission, shall designate the Commission as recipient of the material or testimony specified, and shall designate a specific time and place for the production of the documents and/or testimony.
- (2) **When available.** A subpoena may be used to compel testimony or the production of documents whenever there is reasonable cause to believe that those materials or the testimony of the persons are material to the complaint.
- (3) **Procedure.** When the Commission's Executive Director or Commission Counsel determines that there is reasonable cause to believe that the testimony or documents withheld are material to investigation of the complaint, the Executive Director or Commission Counsel may issue a subpoena.

The subpoena shall include: the name and address of the respondent subject of the subpoena; if the subject of the subpoena is not an individual, the name of the senior officer or person in charge; a brief description of the documents requested and/or the name and title of the person(s) whose testimony is requested; and the date, time and place such production and/or testimony is requested.

If a subpoena is issued, notice must be given to the complainant and the respondent.

- (4) **Service.** Subpoenas may be served by any person who is not a party to the proceeding and who is not less than eighteen (18) years of age. Service shall be made by delivering a copy of the subpoena to the person named therein and tendering to that person the fees and mileage paid to witnesses in the Superior Court of this State.
- (5) **Return.** The person serving the subpoena shall make proof of service by filing the original of such subpoena and an affidavit of acknowledgment of service with the Commission. However, failure to make such proof of service shall not affect the validity of such subpoena and service.

- (6) **Enforcement.** If any person refuses to obey a subpoena, the Commission may apply to any justice of the Superior Court for an order compelling compliance with the subpoena.
- (7) **Opposition.** Any person served with a subpoena may oppose it by applying for judicial review in Superior Court.

G. **Confidentiality**

- (1) Prior to the conclusion of an investigation, all information possessed by the Commission relating to the investigation is confidential and may not be disclosed, except that the Commission and its employees have discretion to disclose such information as is reasonably necessary to further the investigation. An attorney will not be provided with information regarding an investigation prior to its conclusion unless the attorney (or the attorney's law firm) has entered an appearance on behalf of a party to the complaint.
- (2) The parties to the complaint shall be required, as a condition of the investigation, to agree to maintain the confidentiality of all information that they learn through the Commission's investigatory process during the pendency of the investigation, including information learned through documents produced directly by another party when those documents are produced as part of the Commission's process. The willful failure by a party to comply with the requirement of confidentiality may result in sanctions, including, but not limited to, adverse inferences being drawn, the Commission's refusal to provide further information in the record to the party or limiting the conditions on which information may be provided to them, and/or dismissal of the complaint.
- (3) The complaint and any evidence collected during the investigation that is a "public record" as defined by 1 M.R.S. § 402, other than data identifying persons who are not parties, shall become available to the public for review and inspection, upon written request, a ~~matter of public record~~ upon issuance of a letter of dismissal or upon listing of the complaint on a published Commission meeting agenda. The complaint and evidence collected may be used as evidence in any subsequent proceeding, civil or criminal.
- (4) The following documents are considered confidential, and shall not be disclosed except to the parties to a complaint, the Commission and its federal partner agencies, or in a subsequent legal action, civil or criminal. They are not considered "public records", and shall not become a "matter of public record" for the purposes of disclosure to the public under this section or Title 1, section 401 et seq.:
- i. Medical, counseling, psychiatric, and other confidential health records;

- ii. Social security numbers;
- iii. Evidence of conduct or statements made in compromise settlement negotiations, offers of settlement, and final agreements made prior to the conclusion of the investigative process;
- iv. Names of minor children;
- v. Any information the Commission is required to be keep confidential pursuant to worksharing agreements with federal partner agencies such as the Equal Employment Opportunity Commission or Department of Housing and Urban Development;
- vi. Criminal history record information that is not otherwise made public by law;
- vii. Personnel records and personal information that has been made confidential by law;
- viii. Notes made by the investigator for their private use in assessing evidence gathered during an investigation; and
- ix. Any other records that are not public records in accordance with Title 1, section 402.

(5) The Commission may direct that confidential information be redacted from records and documents before a party provides those records and documents to the Commission. Alternately, if confidential information is provided to the Commission, and the Commission requires that information be redacted, the Commission may direct the producing party to provide the information in a redacted format.

- H. Upon completion of the investigation, the Commission's investigator will make and transmit a report of the investigation together with recommendations concerning the disposition of the complaint (~~hereafter referred to as Investigator's Report~~), to the complainant and the respondent. The Investigator's Report shall be approved for legal sufficiency by the Commission Counsel or ~~her/his~~ their designee before it is issued; any addendum to the Investigator's Report required by a federal partner of the Commission may be considered confidential pursuant to 2.05(G). All parties to a complaint shall be given a reasonable opportunity to review and respond to all evidence considered by the Commission before the Investigator's Report is issued, but the timing of any such review shall be subject to the investigator's discretion. With respect to complaints alleging unlawful housing discrimination, unless it is impracticable to do so, the Commission will issue an Investigator's Report within 100 days of the filing of the complaint. If the Commission is unable to do so, it will notify the complainant and respondent by mail of the reasons for the delay.
- I. Upon receipt of the Investigator's Report described in 2.05(~~FH~~), a party shall have an opportunity to make a written submission to the Commission setting forth specific items of disagreement with the report and/or recommendations. The written submission shall be filed with the Commission's office within ~~seventeen~~

~~(17)~~ twenty-one (21) days of issuance of the Investigator's Report. Only specific items of disagreement that address the following will be considered:

- (1) relevant factual errors;
- (2) relevant omissions of fact; and/or
- (3) relevant issues and questions concerning interpretation of the law.

Written submissions may not include any facts that were not presented to the investigator during the course of the investigation. A party's written submission shall be reviewed by the investigator, who will determine whether it contains facts which were not previously presented. If a submission contains such facts, they will be redacted by the Commission's staff, and only those portions of the written submission remaining (if any) will be presented to the Commission. If the party making the submission disagrees with any of the redactions made, the party may, within two business days of receiving notice of the redactions, submit a written objection identifying the items of disagreement and providing citations/references to the record to establish that the fact(s) was/were previously presented. Commission Counsel will review the submissions and the record, and will make a final decision regarding the redaction(s), which shall not be subject to further review.

If it appears to Commission Counsel that the previously unrepresented facts would change the legal sufficiency of the report, Commission Counsel will notify the Executive Director. The Executive Director and Commission Counsel shall confer and determine what, if any, additional investigation must be undertaken. After any additional investigation, an amended Investigator's Report may be issued, or the Commission may take any other procedural action it deems appropriate in the circumstances.

Parties that agree with the Investigator's recommendation shall not make a written submission unless necessary to correct a material factual error in the report. Such a submission may not be provided to the Commission.

Submissions may not be made electronically or by facsimile except by prior written permission from the Executive Director or their designee.

- J. At the expiration of the ~~seventeen (17)~~ twenty-one (21) day period, a Commission representative will transmit the Investigator's Report and the written matter submitted by the complainant and/or respondent (as redacted where necessary) to the Commission. Submissions received after the twenty-one (21) day period shall not be provided to the Commission and shall not be considered unless an extension of time is granted pursuant to § 2.11(C).

- K. The Commission must conclude its investigation within ~~2~~ two years after a notarized complaint is filed with the Commission. An investigation is concluded for purposes of this requirement upon issuance of a letter of dismissal or upon listing of the complaint on a published Commission meeting agenda, whichever first occurs.
- L. With respect to complaints alleging unlawful housing discrimination, the Commission must make final administrative disposition of the complaint within 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 parties, in writing, of the reasons for not doing so.

2.06 COMMISSION MEETING

A. Presentations

- (1) The Commission may allow the parties, in cases in which a written submission of disagreement with the Investigator's Report has been made by one or more parties, to make an oral presentation on information related to the complaint of discrimination at a monthly Commission meeting. Information presented must comply with 2.05(~~G~~).
- (2) The Commission may impose time limits:
- a) The standard time for each party's oral presentation shall be 10 minutes, exclusive of time spent responding directly and succinctly to questions from the Commission (extended argument after a question has been answered will be considered part of the party's presentation time). That time may be shortened in order to ensure that all cases receive a sufficient allotment of time, based on the length of that meeting's agenda.
 - b) Absent special circumstances, as determined by the Executive Director, when a case involves multiple Complainants or multiple Respondents (and when related or companion cases involve substantially similar issues and/or parties), the 10-minute time-limit will apply to the Complainants and/or Respondents collectively, and the individual parties shall allot the time amongst themselves.
 - c) If a party does not use their entire time allotment in their initial presentation, they may use the remaining time to rebut the opposing party's presentation. Each party shall be allowed one presentation, and one rebuttal period. Any time remaining shall be forfeited.
 - d) These time limits and procedures are subject to the discretion of the Commission, which may extend time or allow further rebuttal

if the Commission deems it necessary to their understanding of the case.

- (3) A party who did not make a written submission may make a presentation at the Commission meeting to rebut the opposing party's presentation.
- (4) If the party/parties who disagree with the Investigator's Report does not attend the meeting, despite having provided a written submission, the party/parties agreeing with the Report shall be heard only upon request of the Commission.
- (5) If a party wishes to request a reasonable accommodation (for example, a request for an interpreter for an individual for whom English is not their primary language) to participate at a Commission meeting, the party should make the request to the Executive Director at least five business days prior to the meeting. The request should provide information sufficient to allow the Executive Director and/or Commission Counsel to evaluate the request, such as the reason for the request (i.e. disability, language barrier), the accommodation requested (i.e., captioning, in-person interpreter versus remote interpreting, dialect needed, visual alerts, extended presentation time), and (where not obvious) the connection between the protected class and the requested accommodation. When it cannot provide the specific accommodation requested, the Commission may offer alternative reasonable accommodations tailored to meet the individual's need. If the requested accommodation (or a reasonable and effective alternative) cannot be arranged prior to the meeting, the case may be tabled in order to allow sufficient time to identify and provide a reasonable accommodation.
- (6) If a party intends to use any visual/illustrative aid in their presentation to the Commission, that aid must be provided to the other party and to the Executive Director at least five business days prior to the meeting so that it may be reviewed. Any visual/illustrative aid must comply with Rule 2.05(I).
- (7) An oral presentation to the Commission may be made only by a party to the complaint or by their legal representative. If a party wishes to be represented by an individual other than their legal representative, they must make a request to the Executive Director at least five business days before the scheduled presentation. The Executive Director shall have discretion over all such requests. In no case shall a witness in the case be allowed to participate in an oral presentation. Non-parties shall be referred to by pseudonyms only.

B. Meeting Protocols

- (1) Inappropriate behavior, which may include but is not limited to name-calling or yelling, or the failure to abide by the Commission's rules, rulings, or instructions by the Commission, the Executive Director, or Commission Counsel, may result in the responsible party's presentation being summarily curtailed.
- (2) If the Commission has imposed safety protocols regarding meeting attendance or participation, any person seeking to participate in the meeting who refuses to comply with or violates those procedures may be summarily excluded from the meeting by the Commission or the Executive Director or their designee.
- (3) The Commission may allow for remote participation in its public proceedings pursuant to policies it establishes.

2.07 COMMISSION DECISION UNDER NON-EMERGENCY PROCEDURE

After considering the Investigator's Report, ~~complainant's and respondent's~~ the parties' submissions, if any, and other relevant related information that was timely provided, the Commission will make a determination of whether or not reasonable grounds exist to believe that unlawful discrimination has occurred. The Commission shall issue a statement of finding in support of its determination.

- A. **No reasonable grounds.** If the Commission finds no reasonable grounds to believe that unlawful discrimination has occurred, it will dismiss the complaint. The Commission will promptly notify the parties of the dismissal and provide them a copy of its statement of finding.
- C. **Reasonable grounds.** If the Commission finds reasonable grounds to believe that unlawful discrimination has occurred, it will so notify the parties of its determination and provide them a copy of its statement of finding. The Commission's ~~Compliance Manager~~ Executive Director or ~~her/his~~ their designee will then endeavor to resolve the matter by informal means such as conference, conciliation, or persuasion.
- D. **Tie votes.** If the Commission vote results in a tie vote, the recommendation(s) made in the Investigator's Report shall be adopted by the Commission as their finding(s).
- E. **New investigation.** If, subsequent to a finding, the Commission determines that new or newly-discovered facts or factual errors exist, or material misrepresentations have been discovered ~~there have been relevant, factual errors or relevant omissions of fact~~ that, if ~~they are~~ true, would likely change the finding of the Commission, it may order a new investigation of the matter. ~~The Commission will promptly notify the parties of its decision to investigate the matter again.~~ The following applies to requests for a new investigation:

- (1) A request for a new investigation must be based on new or newly-discovered facts, factual errors, or material misrepresentations.
 - a. “New or newly-discovered facts or factual errors” are those that were not known and could not reasonably have been known to the party making the request during the course of the investigation. If the facts or factual errors were known to the party, or reasonably could have been known, and were not provided to the investigator, they cannot be used to justify a request for a new investigation.
 - b. “Material misrepresentations” are intentional misrepresentations of facts upon which the Investigator relied when deciding whether a party had established the elements of a claim or defense.
- (2) A request for a new investigation may only be made by a party to the complaint or their counsel, or by a member of the Commission’s staff. The request shall be made initially to the Commission’s Executive Director, who will consult with Commission Counsel as necessary to determine whether the request is based on new or newly-discovered facts or factual errors, or on material misrepresentations. The request must be made within 30 days of the Commission’s finding.
- (3) If the Executive Director or their designee determines that the request for a new investigation is not based on new or newly-discovered facts or factual errors or material misrepresentations, they will notify the parties that the request for a new investigation has been denied. If they determine that the request is based on new or newly-discovered facts or factual errors or material misrepresentation, they shall allow the parties the opportunity to submit written argument (simultaneous briefing, no replies accepted). The request for a new investigation will then be presented to the Commission. No oral presentation by the parties will be allowed except upon request of the Commission.
- (4) The Commission will determine whether to order a new investigation after considering the new evidence (or a description thereof) and the written submissions from the parties, if any. The Commission will promptly notify the parties of its decision.

2.08 COMMISSION DECISION UNDER EMERGENCY PROCEDURE

If the preliminary investigation of the complaint persuades the Commission's Executive Director or other designated employee that a situation comparable to those described in 5 M.R.S. §4612(4)(B) exists, the Executive Director or other designated employee shall so notify the Commission. As soon as practical after notification, the Commissioners will consider the matter by means of a special meeting or other appropriate method. The Executive Director or other designated employee will take all reasonable steps to notify

the parties of the special meeting or other appropriate method and of their right to participate.

- A. If the Commission finds no reasonable grounds to believe that unlawful discrimination has occurred, it will issue an order dismissing the complaint. The Commission shall issue a statement of finding in support of its determination.
- B. If the Commission finds reasonable grounds to believe that unlawful discrimination has occurred, but does not believe that irreparable injury or great inconvenience will be caused to the victims of such discrimination if relief is not immediately granted; it will notify the parties of its determination, provide them with a copy of its statement of finding and process the complaint under its non-emergency procedure.
- C. If the Commission finds reasonable grounds to believe that unlawful discrimination has occurred and further believes that irreparable injury or great inconvenience will be caused the victim or victims of such discrimination if relief is not immediately granted, it may request the Commission Counsel or ~~her/his~~ their designee to file a civil action in the Superior Court seeking appropriate relief. As soon thereafter as practicable, the Commission shall issue a statement of finding in support of its determination.
- D. Tie votes.** If the Commission vote results in a tie vote, the recommendation(s) made in the Investigator's Report shall be adopted by the Commission as their finding(s).

2.09 POST-DETERMINATION CONCILIATION

A. Conference, conciliation and persuasion

In conciliating a matter in which a determination of reasonable grounds has been made pursuant to the non-emergency procedure of section 2.07(B) of these regulations, the Commission shall attempt to achieve a just resolution and to obtain assurances that the respondent will eliminate the unlawful discrimination and take any appropriate corrective action. Disposition of a matter pursuant to this section shall be in the form of a written agreement and approved by a majority of the Commission, and notice thereof shall be sent to the parties. Upon ascertainment by the Commission's Executive Director or ~~her/his~~ their designee that the terms of the signed agreement have been met, the proceeding shall be dismissed. In order to facilitate the ascertainment that the terms of settlement have been met, the parties shall provide the terms of any agreement between them to the Executive Director or their designee upon request. Any information provided to the Executive Director for this purpose shall remain confidential, except that settlement information may be reported to the Commission, the EEOC, or HUD.

The Commission specifically delegates to its Executive Director and its Commission Counsel the authority to execute conciliation agreements in the name of the Commission once a majority of the Commission has approved the agreement.

B. Refusal of respondent to cooperate

If a respondent fails or refuses to confer with the Commission or its representatives, or fails or refuses 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 parties~~ shall be notified promptly, in writing, that such efforts have been unsuccessful.

C. Refusal of complainant to agree

If a complainant fails or refuses to agree to the terms of a conciliation agreement or settlement that the Commission believes represents a just resolution of the complaint of discrimination, the Commission may execute a conciliation agreement with the respondent limited to assurances that the respondent will eliminate such unlawful discrimination and take any appropriate corrective action. The proceeding shall be dismissed upon ascertainment by the Commission's Executive Director or ~~her/his~~ their designee that the terms of the signed agreement have been met. Where the complainant is not a party to such a conciliation agreement, the execution of the agreement by the Commission and the respondent shall not extinguish or in any way prejudice the complainant's right to pursue any and all appropriate individual remedies. This subsection shall not apply to complaints investigated pursuant to an agreement between the Commission and the United States Secretary of Housing and Urban Development that requires the Commission to file a civil action for the use of the complainant.

D. Confidentiality of conciliation efforts

Everything said or done during and as part of the Commission's informal endeavors to eliminate unlawful discrimination by conference, conciliation and persuasion is confidential and may not be disclosed without the written consent of the parties concerned or used as evidence in any subsequent proceeding, civil or criminal, except in a civil action alleging a breach of the agreement filed by the Commission or a party. Notwithstanding this provision, the Commission and its employees have discretion to disclose such information to a party as is reasonably necessary to facilitate conciliation. Post-finding conciliation agreements to which the Commission is a signatory are public records. ~~In addition, the Commission will insist that the executed conciliation agreement contain a provision that the agreement shall be made public, unless the complainant and respondent otherwise agree and the Commission determines that disclosure is not required to further the purpose of the Act.~~

2.10 PROCEDURE AFTER FAILURE OF CONCILIATION

- A. If the Commission's ~~Compliance Manager~~ Executive Director or ~~her/his~~ their designee determines that conciliation efforts have failed, ~~she/he~~ they shall so notify the complainant and respondent.
- B. When post-determination conciliation efforts have failed, the Commission Counsel or ~~her/his~~ their designee is authorized to file a civil action in the Superior Court seeking appropriate relief, including, but not limited to, temporary restraining orders and preliminary injunctions.
- C. When the Commission's Counsel or ~~her/his~~ their designee is unable to file expeditiously such a civil action, the Commission shall so notify the complainant of ~~her/his~~ their right to file a civil action pursuant to 5 M.R.S. §4621, and make available a referral list of attorneys who have indicated an interest in undertaking such litigation. The Commission shall furnish ~~to~~ the complainant, the respondent, or their cooperating attorneys, upon request, with access to the investigatory case file ~~and will provide such technical assistance as possible under the existing circumstances.~~ Referral under this subsection does not terminate the Commission's jurisdiction of the proceeding.
- D. In complaints investigated pursuant to a Memorandum of Understanding between the Commission and the United States Department of Housing and Urban Development that results in a reasonable grounds determination, ~~the~~ Commission Counsel shall file a civil action for the use of complainant if conciliation efforts are unsuccessful.

2.11 TIME LIMITS

- A. When these regulations establish any time limit for the filing, submission, or production of any document, record, file or other possible source of evidence, or for the filing of any request with the Commission, such item must be received in the office of the Commission before the close of business on the last day of the time limit.
- B. In computing any period of time prescribed or allowed by these regulations, the day of the act, event or default from or after which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or legal state or federal holiday, in which event the period shall run until the end of the next day that is not a Saturday, Sunday or legal state or federal holiday.

- C. The Commission's Executive Director or ~~her/his~~ their designee, or the Commission, may extend any time limit provided in this chapter for good cause shown, and shall notify the parties of any such extension.

2.12 ADVISORY RULINGS

- A. Upon written request of any interested person, the ~~Commission's Compliance Manager-Commission Counsel~~ or ~~her/his~~ their designee may make an advisory ruling with respect to the applicability of the Maine Human Rights Act or the rules promulgated by the Commission to that person or an actual state of facts. Interested persons shall not be provided with legal advice, and should not request legal advice from Commission Counsel in the guise of a request for an advisory ruling.
- B. Advisory rulings made pursuant to this section shall not be binding upon the Commission, provided that, in any subsequent civil action initiated by the Commission, any person's justifiable reliance upon the ruling shall be considered in mitigation of any civil penal damages or punitive damages sought by the Commission.

STATUTORY AUTHORITY: This rule is adopted pursuant to 5 M.R.S. §4566(7).

EFFECTIVE DATE:

October 16, 1978

AMENDED:

April 24, 1991

July 5, 1994

March 12, 1995 - Amended Sec. 2.05(D)

March 14, 1995 - Added Sec. 2.02 (I)

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 12, 1996

NON-SUBSTANTIVE CORRECTIONS:

October 2, 1996 - minor spelling

AMENDED:

November 18, 1997 - 2.02 (D) - minor address change; 2.05 (G, H) - 17 days of issuance.

REPEALED AND REPLACED:

July 17, 1999

AMENDED:

February 8, 2010 – filing 2010-19

November 26, 2012 – filing 2012-332

August 7, 2013 – filing 2013-195

September 24, 2014 – filing 2014-226