



**City of Chicago**  
**COMMISSION ON HUMAN RELATIONS**  
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**STANDING ORDER**  
**ADMINISTRATIVE HEARINGS & PRE-HEARING PROCEDURES**

*This Standing Order describes some of the administrative hearing procedures at the Chicago Commission on Human Relations. This Standing Order does not constitute legal advice and is not a full statement of the law and procedure that may apply to a given case. You must review the Commission's regulations in addition to this Standing Order to fully understand your rights and responsibilities in the hearing process.*

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**About Administrative Hearings.** The purpose of an administrative hearing is to receive evidence from the parties to enable the Board of Commissioners of the Commission on Human Relations to decide whether each named respondent has violated the Chicago Human Rights Ordinance or Chicago Fair Housing Ordinance as alleged, and if so what remedies should be ordered. It is the complainant's opportunity to prove the case. As to any respondent found in default, the purpose of the administrative hearing is limited to determining whether the complainant has presented a *prima facie* case of discrimination in violation of the pertinent ordinance, and then determining what is appropriate relief if a *prima facie* case is established. At the hearing, testimony is taken under oath and transcribed by a court reporter. Parties may cross-examine each other's witnesses and may introduce documents into evidence. The hearing officer may permit opening and closing statements. An administrative hearing is similar to a trial in court, even though some procedures may be less formal. Rules governing the administrative hearing process are found in Subpart 240 of the Commission's regulations.

**The Commission's Neutral Role.** It is the *complainant's* responsibility to present sufficient credible evidence to prove the alleged claims. The Commission does not prosecute the case (unless it is a Commission-filed complaint). Each complainant or respondent must obtain and introduce any evidence the party wants considered. The hearing officer does not receive any report from Commission staff concerning the investigation, nor does the hearing officer receive most other documents from the investigation file. See Regs. 240.307 & 240.510. Pursuant to Reg. 240.370, Commission employees may testify only if ordered by the hearing officer, and only about admissible evidence which cannot be obtained through other means. Subpoena and discovery options are available to help parties obtain evidence, as described below. A party may arrange to inspect the investigation file for possible evidence, also explained below.

**About Hearing Officers.** The hearing officer is an attorney appointed by the Commission from a panel of attorneys who have been pre-selected for service as hearing officers based on their knowledge of discrimination law and litigation. The hearing officer will hear the evidence and legal arguments of each party, rule on motions made during the hearing process, and issue one or more recommended rulings on liability (that is, whether an ordinance violation occurred) and on the relief to be ordered if liability is found. After receiving a recommended ruling, the Board of Commissioners of the Commission on Human Relations makes all final rulings in the case. Hearing officers are not Commission employees but are paid as independent contractors. The hearing officer appointed for a case has not participated in the investigation, mediation, or other prior proceedings in the case. See Regs. 240.307 and 100(17). See Section 240.200 about motions to disqualify a hearing officer whose impartiality in the case might reasonably be questioned.

**Filing and Serving Documents.** After the Commission appoints a hearing officer, copies of any documents filed in the case must also be *served* on the hearing officer (as well as the other parties in the case). Copies intended for the hearing officer must be mailed or delivered to the hearing officer's *own office* address (provided in the order appointing the hearing officer), not to the office of the Commission. In addition, the original and one copy must be *filed* with the Commission (except for certain discovery documents which are served only on other parties). See Section 270.200 of the Commission's regulations for the rules about filing and serving documents. It is important to follow these rules or the documents may not be accepted.

The Commission has a Notice of Hearing and Certificate of Service form to help parties file and serve documents correctly. Document filings are accepted at the Commission's reception desk during business hours. Parties may call to confirm the Commission's current business hours.

**Communication with the Hearing Officer.** Pursuant to Reg. 240.321, neither a party, a party's attorney, nor any other individual on the party's behalf may communicate, directly or indirectly, with a hearing officer in connection with any issue except upon notice and opportunity for all parties to participate. This prohibition against "*ex parte*" communication means that no complainant or respondent may telephone or in any other way try to communicate individually with the hearing officer. No letter or other document may be sent to the hearing officer unless the original and one copy is *filed* at the Commission and a copy is *served* on all other parties. If it becomes necessary to speak with someone from the Commission during the hearing and Board ruling process (such as a procedural question or a last-minute attendance problem), a party may contact the Commission's staff attorney, whose telephone number is provided in the order appointing the hearing officer and commencing the hearing process.

**Attorney Representation.** The hearing and Board ruling process in a discrimination case can be complex. Parties must comply with legal requirements whether or not they have an attorney. Therefore, legal representation during the hearing process is highly recommended. However, corporations **MUST** be represented by a licensed attorney during the administrative hearing process. Failure of a corporation to appear at a proceeding during the administrative hearing process with a licensed attorney may result in the entry of an Order of Default.

Please keep in mind that hearing officers may not consider the last-minute entry of an attorney into a case to be good cause for postponing a deadline, pre-hearing conference, or administrative hearing. Therefore, parties that want to retain or change counsel should act promptly. See Reg. 210.320(a).

The Commission provides a *Legal Assistance Information* list of not-for-profit resources as a starting point in finding an attorney knowledgeable about discrimination law and litigation, but the Commission does not make referrals to attorneys. To participate in the case and access information in the investigation file, an attorney must have filed and served an appearance. See Section 270.300 of the Commission's regulations requirements concerning attorney representation.

**Rescheduling: Continuances and Extensions of Time.** If a party cannot meet a submission deadline or cannot attend a pre-hearing conference or administrative hearing on the date scheduled, that party must file and serve a written motion seeking a continuance or extension of time. *Telephoning is not sufficient.* This motion must be made as soon as the party learns about the need for rescheduling, and the motion must establish *good cause* for rescheduling. Although a party should telephone the Commission and the other parties if a last-minute emergency arises before a pre-hearing conference or administrative hearing, the call must be followed up with a written motion establishing good cause for the absence. In filing or responding to a motion for continuance, parties are asked to include information about their availability, to assist in rescheduling. The hearing officer will issue an order, which will set a new date if the motion is granted. See Reg. 210.320 on extensions and continuances.

**Attendance Requirements and Penalties.** Attendance at the administrative hearing and any pre-hearing conference is essential, and severe penalties can follow if a party fails to attend without good cause. If a complainant fails to attend any part of the administrative hearing without good cause, the hearing officer may dismiss the complaint immediately, without further notice. If a respondent fails to attend any part of the administrative hearing without good cause, the hearing officer may enter an order of default immediately, without further notice. See Reg. 240.398. If an order of default is entered at the administrative hearing, the hearing officer will allow the complainant to present a *prima facie* case at that time, pursuant to Reg. 235.320, and any defenses the respondent may have will not be considered. In addition, the hearing officer may impose any of the other monetary sanctions described in Section 235.400 of the Commission's regulations and in the information on other procedural sanctions immediately below.

**Other Procedural Sanctions.** Parties are subject to procedural sanctions for any failure to comply with a regulation or order during the hearing process, so it is important to know and follow the procedural requirements. In addition to failure to attend a scheduled proceeding, discussed above, examples of procedural violations include failure to submit a pre-hearing memorandum or failure to disclose an exhibit or witness in the pre-hearing memorandum (Reg. 240.130(c)) and failure to comply with discovery requests, requirements or orders (Reg. 240.463).

The general procedural sanctions which may be imposed include dismissal of a complainant's complaint, default of a respondent, a fine up to \$500 per incident, and payment of the costs of any other party inconvenienced by the procedural violation including the party's attorney fees. Details about these sanctions are found in Subpart 235 of the Commission's regulations, along with procedures for the imposition of sanctions and for seeking to vacate or modify a sanction which has been imposed.

**Discovery.** Discovery is a process by which the parties seek information from one another to help them prepare and present their cases at the administrative hearing. Section 240.400 of the Commission's regulations states the scope and procedures for discovery in Commission cases. In general, discovery rights are more limited at the Commission than in civil cases in state or federal court.

- **Request for Documents.** Parties have the right to make a written request for documents to an opposing party, as set forth in Reg. 240.407. The request for documents must be served on the opposing party no more than 30 days from the mailing of the order appointing the hearing officer and commencing the hearing process. The return date specified in the order must be no fewer than 21 days from the date of service of the request. The request for documents must be served on the hearing officer and all other parties, and must also be filed with the Commission. The response to a request for documents must be served on the requesting party and all other parties. Although the response does not need to be served on the hearing officer or filed with the Commission, the *certificate of service* for the response must be served on the hearing officer and filed at the Commission.

- **Additional Discovery.** No other discovery (such as depositions) is allowed except by agreement of all parties or an order of the hearing officer granting a motion to conduct additional discovery. A party may move for leave (permission) to conduct additional discovery. The motion must be served on all

parties and the hearing officer and filed with the Commission. If the motion is granted, the hearing officer's order will set deadlines for service and response. See Reg. 240.435(a). Special rules apply to any motion seeking a physical or mental examination of a complainant in a disability discrimination case. See Reg. 240.435(b).

· **Responses and Enforcement.** See Section 240.400 of the Commission's regulations for additional rules about objecting to discovery requests, the duty to supplement the response if new information is found, and the penalties for failure to comply with permitted, reasonable discovery requests.

· **Motion to Compel.** This motion may be filed if a party fails to comply with reasonable discovery requests, requirements, or orders. See Reg. 240.456 and the section on motions to compel, below.

**Pre-Hearing Memorandum.** Each party is required to submit a pre-hearing memorandum, unless an order is issued saying it is not necessary. The deadline will be set either in the initial order appointing the hearing officer and commencing the hearing process, or in a later order by the hearing officer. The pre-hearing memorandum must be filed at the Commission and served on every other party as well as the hearing officer. An optional form is attached to this Standing Order, as a guide.

· **Required Content.** The required content of a pre-hearing memorandum is stated in Reg. 240.130. That regulation should be carefully reviewed to make sure all details are covered. For most cases, the key requirements are (1) information about the witnesses the party plans to call at the hearing, (2) copies of all documents the party plans to introduce into evidence at the hearing, and (3) from the complainant, an itemized statement of the nature and amount of damages being sought.

· **Optional Content.** In addition to the required items, a party may include in the pre-hearing memorandum (1) a position statement (for example, explaining the complainant's theory of the case or the respondent's defense); (2) a memorandum of law citing and describing the precedential cases or the provisions of the ordinances and regulations which support the party's position; and (3) stipulations as to material facts and uncontested issues of law.

· **Penalties if Missing or Incomplete.** A party that fails to submit any pre-hearing memorandum, or that only partially complies with the specific requirements, may be penalized by order of the hearing officer if the failure was without good cause. The hearing officer may impose any of the procedural sanctions in Subpart 235, discussed above. In addition, the hearing officer may exclude any exhibit (such as a document) or witness not disclosed in a pre-hearing memorandum, which means the evidence may not be used to support the party's claims or defenses in the case. Or the hearing officer may order a continuance of any scheduled hearing or pre-hearing conference to allow other parties time to review the exhibit or determine the nature of the witness testimony, then prepare to respond to it. Because exclusion and continuance are strong penalties, they may be ordered only on a showing that another party was surprised and placed at a disadvantage by the failure to disclose. Another option available to the hearing officer is to issue a new order requiring the party to submit or supplement the pre-hearing memorandum by a certain date.

**Pre-Hearing Conferences.** A pre-hearing conference is scheduled in most cases. At a pre-hearing conference, the parties meet with each other and the hearing officer to discuss any preliminary issues such as the scheduling of the administrative hearing, any pre-hearing motions, allowable discovery and the deadlines for it, and the submission of the pre-hearing memorandum. Sometimes more than one pre-hearing conference is held. Some hearing officers hold pre-hearing conferences at their own offices rather than at the Commission. A pre-hearing conference may be conducted by telephone conference call if the scheduling order specifies it and all parties have the opportunity to participate.

Pursuant to Reg. 240.120, the hearing officer conducts the pre-hearing conference. Unless the hearing officer orders otherwise: (1) each party must attend, but an attorney may attend for any party represented by the

attorney; (2) no testimony is taken; and (3) no recording or transcript of the conference is made. Any oral decisions by the hearing officer at a pre-hearing conference do not take effect until a confirming order is issued in writing (unless a Commission court reporter was provided). Penalties for failure to attend a pre-hearing conference are in Subpart 235 of the Commission's regulations.

**Motions and Orders.** Reg. 240.349 states the general provisions for motions, objections to motions, and orders issued during the hearing process. In general, all motions must be made in writing, and the hearing officer will issue all orders in writing. Exceptions are motions or orders made during the administrative hearing itself, where a court reporter is transcribing the proceedings. A hearing officer may hear arguments on a motion at a pre-hearing conference but then must either (1) require the moving party to file and serve the oral motion or objection in writing before issuing a decision or (2) issue a written order which describes the motion or objection and states the decision.

Written motions must be filed with the Commission and *served* on every other party and the hearing officer. Objections to motions have the same requirements, and must be filed and served no later than 14 days from the date the motion was filed. However, if the motion was filed within 14 days of the administrative hearing in the case, then any objection may be stated on the transcribed record at the hearing.

Motions for continuances and extensions of time are governed by Reg. 210.320. Motions to dismiss are governed by Regulation 210.330. Motions concerning subpoenas are governed by Section 220.200.

**Motions to Compel.** Pursuant to Reg. 240.456, a motion to compel may be made by any party who believes another party has failed, without good cause, to comply with its reasonable discovery requests or with other hearing procedures and orders not governed by a specific enforcement procedure. The motion must be filed and served no later than 7 days after the failure to comply and must state what sanctions the moving party is seeking. Any response must be filed and served within 7 days of the filing of the motion, and must either fully comply with the requirement at issue or must show good cause for not doing so. See also Reg. 220.240(d) concerning motions to compel compliance with a subpoena.

**Subpoenas.** After commencement of the hearing process, a party may move for leave to have a subpoena issued in connection with the administrative hearing, pursuant to Reg. 220.210(b) and the procedures stated in Section 220.200. Generally, the motion must be made no fewer than 21 days before the date for examination or production (usually the date of administrative hearing) and may be for the appearance of a witness, the production of documents, or both. Pursuant to Chicago Municipal Code §2-120-510(k), in no event may the date for examination or production be fewer than seven days after service of the subpoena.

Among other requirements, the motion must state the reasons the information sought is relevant to the case and could not be obtained through any other means. To expedite the issuance of subpoenas, the requesting party should attach to the request subpoenas which are completed except for the relevant signature; a blank subpoena form is attached to this Standing Order. If the hearing officer grants the motion for a subpoena, the hearing officer may sign it or the requesting party may arrange for an authorized Commission staff member to sign it on behalf of the Commission. The requesting party is responsible for service of the subpoena, for the cost of service, and for all witness and mileage fees; see Reg. 220.220. The Commission will not seek enforcement of a subpoena unless it is served in accordance with §2-120-510(k) of the Chicago Municipal Code and Reg. 220.220.

The person to whom the subpoena was issued may object to the subpoena as set forth in Regulation 220.230(a). A non-issuing party may object to the subpoena as set forth in Regulation 220.230(b).

**Settlement During the Hearing Process.** Parties may settle a case at any time before a final order is entered. The Commission may, in its discretion, schedule and hold a confidential settlement conference facilitated by an independent Commission mediator, who will confer with the parties in an effort to secure a voluntary settlement of the complaint. Parties or the hearing officer may request that the Commission schedule such a settlement conference, but the decision and scheduling will be by authorized Commission staff, not the hearing officer. A scheduled settlement conference does not stay the proceedings or constitute an extension of time for any deadline unless so ordered by the hearing officer. For more information including procedures for closing a case based on voluntary settlement, see Subpart 230 of the Commission's regulations as well as the Commission publication *Settlement and Mediation*.

**Access to Case Records.** After a finding of substantial evidence, parties may wish to inspect the Commission's investigation file to identify possible evidence and prepare for the administrative hearing. Pursuant to Regulation 220.410(a), a party, or the party's attorney, may review most documents in the investigation file at any time after issuance of an order concluding the investigation process (which includes an order finding substantial evidence) or dismissing a case in its entirety. Notice to the Commission of at least two business days is required. The request may be directed to the Commission's adjudication docket clerk (telephone 312/744-2863), who will work with the party to arrange for inspection and any copying.

The Commission does not allow inspection of internal memoranda, work papers, notes generated by Commission staff or agents in the course of an investigation, or of other material reflecting the deliberative process, mental impressions, or legal theories and recommendations of Commission staff or agents.

At the beginning of the hearing process, the Commission sets up the official hearing record. Reg. 240.510 lists the initial content of the hearing record and the documents that will be added as the process continues. Unlike the investigation file, the official hearing record is open to public inspection at any time upon making appropriate arrangements with the Commission. Any party or witness concerned about unreasonable annoyance, expense, embarrassment, disadvantage, or oppression due to the public nature of any of the hearing record should consider making a motion to seal that part of the record pursuant to Reg. 240.520, which specifies in detail what types of information can be placed under seal if justification is presented.

The complaint and certain information about its status are also public information which the Commission may disclose at any time, pursuant to Reg. 220.410(b). However, the Commission may withhold any of that information for good cause including any of the grounds set forth in Reg. 240.510 for sealing a hearing record.

A party may request in writing that the Commission not include the party's name, telephone number, or address in any public acknowledgment of a complaint, but must provide good cause for such a request.

**Copying of Documents.** The Commission will make copies of the documents available for inspection by the parties or the public at a charge not to exceed 20 cents per page plus any delivery costs. Arrangements for copying may be made at the time documents are requested or actually inspected, although staff may not be able to make the copies that day. Copies will not be released until the Commission has received payment in full. Payment is by check or money order in the exact amount, payable to the City of Chicago. An indigent party may seek waiver of these charges pursuant to Section 270.600 of the Commission's regulations. See Reg. 220.420.

**Available Legal Information and Forms.** The Commission provides a variety of additional publications and forms to assist parties in the administrative hearing process, including copies of the ordinances, regulations, and a *Board Rulings Digest* summarizing decisions issued after administrative hearings including the relief awarded if a violation was found. Many of these documents are available on the Commission's web site, [www.cityofchicago.org/humanrelations](http://www.cityofchicago.org/humanrelations). Many prior Commission decisions can be cited as precedent in later cases. For more information on precedents, see Section 270.500 of the regulations and the free publication *Researching Commission Law*.

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