

# CODE OF BALTIMORE REGULATIONS ANNOTATED

*Regulations Effective as of January 15, 2021*

## **Title 15 OFFICE OF EQUITY AND CIVIL RIGHTS**

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# **Title 15 OFFICE OF EQUITY AND CIVIL RIGHTS**

## **SUBTITLE 01 CIVILIAN REVIEW BOARD**

[CHAPTER 01 CIVILIAN REVIEW BOARD COMPLAINT PROCESS](#)

## **SUBTITLE 02 BALTIMORE COMMUNITY RELATIONS COMMISSION**

[CHAPTER 01 RULES AND PROCEDURES, BALTIMORE COMMUNITY RELATIONS COMMISSION](#)

**Subtitle 01 CIVILIAN REVIEW BOARD**

CHAPTER 01 CIVILIAN REVIEW BOARD COMPLAINT PROCESS

Administrative History

# **Title 15 OFFICE OF EQUITY AND CIVIL RIGHTS**

[Subtitle 01](#) *{RESERVED}*

[Subtitle 02](#) CIVILIAN REVIEW BOARD

## CHAPTER 01 COMPLAINT PROCESS

[15.02.01.01. Authority.](#)

[15.02.01.02. Intake.](#)

[15.02.01.03. Filing a Complaint Outside the CRB.](#)

[15.02.01.04. Filing a Complaint with the CRB.](#)

## CHAPTER 02 COMPLAINT ADJUDICATION

[15.02.02.01. Authority.](#)

[15.02.02.02. Communication with Complainant.](#)

## CHAPTER 03 REPORTING

[15.02.03.01. Authority.](#)

[15.02.03.02. Regular Reports.](#)

[15.02.03.03. Special Reports.](#)

[15.02.03.04. Website.](#)

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[Administrative History.](#)

**Title 15 OFFICE OF EQUITY AND CIVIL RIGHTS**

**Subtitle 01 {RESERVED}**

**Title 15 OFFICE OF EQUITY AND CIVIL RIGHTS**

**Subtitle 02 CIVILIAN REVIEW BOARD**

**CHAPTER 01 COMPLAINT PROCESSING**

Authority: Code of Public Local Laws of Baltimore City, §§ 16-44 and 16-53,

**15.02.01.01. Authority.**

These rules and regulations are promulgated by the Civilian Review Board (CRB) pursuant to the Code of Public Local Laws of Baltimore City, §§ 16-44 and 16-53.

**15.02.01.02. Intake.**

Any person may file a complaint with:

- A. The relevant law enforcement unit internal affairs division;
- B. The relevant law enforcement unit district office;
- C. Maryland Legal Aid;
- D. Maryland Human Relations Bureau;
- E. Baltimore Community Relations Commission;
- F. Commission on Civil Rights; or
- G. The CRB.



### **15.02.01.03. Filing a Complaint Outside the CRB.**

A. Complaints may be filed directly with the law enforcement unit.

- (1) Complaints filed with a law enforcement unit shall be forwarded to the CRB within 48 hours.
- (2) In the case of an oral complaint, the entity will provide the CRB with complaint contact information within 48 hours so that the CRB may attempt to obtain a duly signed and completed form.
- (3) Transmission of complaints filed with the Baltimore Police Department's Public Integrity Bureau (PIB) shall be in accordance with the following policies:
  - (a) PIB Complaint Intake and Classification Protocol;
  - (b) PIB/CRB Investigation Protocol;
  - (c) PIB Internal Operations and Training Manual; and
  - (d) Applicable CRB standard operating procedures.

B. Complaints may be filed with non-law enforcement units.

- (1) A complaint that falls within CRB jurisdiction is forwarded to the CRB within 48 hours.
- (2) In the case of an oral complaint, the entity will provide the CRB with complaint contact information within 48 hours so that the CRB may attempt to obtain a duly signed and completed form.

**15.02.01.04. Filing a Complaint with the CRB.**

- A. Complaints shall be filed on the required form in accordance with Code of Public Local Laws of Baltimore City, § 16-44.
  - (1) The complaint form may be obtained online through the CRB website or in hard copy at the entities included in COBRA 15.02.01.02.
  - (2) Assistance completing the form, including language and ADA assistance, is provided by Office of Equity and Civil Rights.
- B. Complaints shall be processed by the CRB in accordance with:
  - (1) CRB's standard operating procedures;
  - (2) PIB Complaint Intake and Classification Protocol;
  - (3) PIB/CRB Investigation Protocol; and
  - (4) Any other relevant laws, policies and protocols.

**Title 15 OFFICE OF EQUITY AND CIVIL RIGHTS**

**Subtitle 02 CIVILIAN REVIEW BOARD**

**CHAPTER 02 COMPLAINT ADJUDICATION**

Authority: Code of Public Local Laws of Baltimore City, § 16-53

**15.02.02.01. Authority.**

These rules and regulations are promulgated by the Civilian Review Board (CRB) pursuant to the Code of Public Local Laws of Baltimore City, § 16-53.

**15.02.02.02. Communication with Complainant.**

- A. For each adjudicated complaint, the administrative support staff will address a letter to the complainant, signed by the CRB Chair, summarizing the CRB's findings and disciplinary recommendations made to the law enforcement unit head.
- B. The letter will be mailed to the complainant within five business days.

**Title 15 OFFICE OF EQUITY AND CIVIL RIGHTS**

**Subtitle 02 CIVILIAN REVIEW BOARD**

**CHAPTER 03 REPORTING**

Authority: Code of Public Local Laws of Baltimore City, §§ 16-53 and 16-54

**15.02.03.01. Authority.**

These rules and regulations are promulgated by the Civilian Review Board (CRB) pursuant to the Code of Public Local Laws of Baltimore City, §§ 16-53 and 16-54.

### **15.02.03.02. Regular Reports.**

- A. The CRB shall prepare, publish, and submit to the Mayor, City Council, and Baltimore Police Department Commissioner, a semiannual statistical report regarding processed complaints.
  - (1) This statutory reporting requirement is pursuant to Code of Public Local Laws of Baltimore City, § 16-54.
  - (2) This report will be published on the CRB website simultaneously with its submission to the Mayor, City Council, and Baltimore Police Department Commissioner.
- B. The CRB will prepare and publish on its website an annual report for the previous calendar year that can include:
  - (1) A summary of CRB activities;
  - (2) Complaint statistics;
  - (3) Policy recommendations;
  - (4) Complaint demographics; and
  - (5) Community feedback gathered at public meetings.
- C. An inventory of policy recommendations submitted to law enforcement units will be posted on the CRB website and can include:
  - (1) The date of the recommendation;
  - (2) Rationale for the recommendation;
  - (3) Feedback from the law enforcement unit; and
  - (4) Outcomes resulting from the implementation of the policy recommendation.



**15.02.03.03. Special Reports.**

- A. The CRB may produce special reports:
  - (1) Related to a critical incident;
  - (2) Related to a policy;
  - (3) Related to the subject of civilian oversight; or
  - (4) To bring an important matter to public attention.
- B. The CRB will authorize the production of such reports as it deems necessary.
- C. Special reports will be published on the CRB website.

**15.02.03.04. Website.**

A. Public disclosure and access to information is at the heart of civilian oversight.

B. CRB website postings will include:

- (1) Meeting agendas;
- (2) Meeting minutes;
- (3) Reports;
- (4) Complaint forms;
- (5) Information about the board members and terms of the board members; and
- (6) Contact information.

**Title 15 OFFICE OF EQUITY AND CIVIL RIGHTS**

**Subtitle 02 CIVILIAN REVIEW BOARD**

**ADMINISTRATIVE HISTORY**

Effective date: November 19, 2020

**Subtitle 02 BALTIMORE COMMUNITY RELATIONS COMMISSION**

CHAPTER 01 RULES AND PROCEDURES, BALTIMORE COMMUNITY RELATIONS  
COMMISSION

Administrative History

Effective Date: January 14, 2017

*Rules  
and  
Procedures*

*Baltimore  
Community Relations Commission*

*adopted: April 16, 1997  
revised: January 14, 2017*

## *Table of Contents*

<b>01.</b>	<b>DEFINITIONS.....</b>	<b>2</b>
A.	“Complaint”.....	3
B.	“Director”.....	3
C.	“Designee”.....	3
D.	“Investigator”.....	3
E.	“Hearing Examiner”.....	3
F.	“Notice”.....	3
<b>02.</b>	<b>COMPLAINTS.....</b>	<b>4</b>
A.	Who May File.....	4
B.	Manner of Filing.....	4
C.	When Filed.....	4
D.	Transfers from the EEOC.....	4
E.	Form.....	4
F.	Review and Authorization.....	5
G.	Notice.....	5
H.	Withdrawal.....	5
I.	Administrative Dismissal.....	5
<b>03.</b>	<b>INVESTIGATIVE PROCESS.....</b>	<b>6</b>
A.	Investigations.....	6
B.	Fact Finding Conferences.....	6
C.	Respondent’s Answer.....	6
D.	Requests for Information.....	7
E.	Interrogatories.....	7
F.	Default Procedures.....	8
G.	Subpoenas.....	9
H.	Review by Commission’s Counsel.....	10
I.	Consolidation of Complaints.....	10
<b>04.</b>	<b>PRE-DETERMINATION SETTLEMENT.....</b>	<b>10</b>
A.	Purpose.....	10
B.	How Commenced.....	10
C.	Settlement Agreement.....	10

<b>05. FINDINGS OF FACT .....</b>	<b>10</b>
A. Written Findings of Fact.....	10
B. Preliminary Findings of Fact – Opportunity to Discuss and/or Respond .....	11
C. Notice of Findings of Fact.....	11
D. Exceptions .....	11
<b>06. APPEALS FROM FINDINGS OF “NO PROBABLE CAUSE” AND “NO JURISDICTION” .....</b>	<b>11</b>
A. Time to File an Appeal.....	11
B. Appeals Proceeding .....	11
C. Appeals Decisions .....	11
D. No Successive Appeals.....	12
<b>07. CONCILIATION (UPON FINDING OF PROBABLE CAUSE) .....</b>	<b>12</b>
A. Notice of Opportunity to Conciliate .....	12
B. Remedies .....	12
C. Conciliation Agreement.....	12
D. Failure or Refusal to Seek Conciliation.....	12
<b>08. PUBLIC HEARING (UPON FAILURE TO CONCILIATE).....</b>	<b>13</b>
A. Certification .....	13
B. Consolidation of Complaints .....	13
C. Hearing Examiner.....	13
D. Pre-Hearing Conference .....	13
E. Notice of Public Hearing .....	14
F. Discovery .....	14
G. Subpoenas Issued Pursuant to the Public Hearing.....	14
H. Conduct of the Public Hearing .....	15
I. Decisions.....	15

## **01. DEFINITIONS**

Except as otherwise provided in Article 4 of the Baltimore City Code, as amended, the term hereinafter set forth, wherever used in these regulations, are defined as follows:

**A. "Complaint"**

A Complaint is a written statement by a person, group of persons or the Baltimore City Community Relations Commission alleging an act of discrimination prohibited by Article 4, Baltimore City Code. No particular language or allegations may be required in a complaint for its filing provided that its language is sufficient to apprise a reasonable person that such an act has been alleged. A complaint may be amended as provided in these regulations to include such allegations of specific facts and particulars as will fairly inform the respondent of the unlawful conduct alleged or otherwise make the complaint conform to the requirements of law.

**B. "Director"**

"Director" includes the Director of Baltimore City Community Relations Commission, and, in the event of his/her absence from the office of the Commission or other temporary inability to fulfill the functions of his/her office, his/her designee or the Chairperson of the Commission.

**C. "Designee"**

"Designee" means a member of the staff of the Commission appointed by the director to perform administrative functions of the office of director.

**D. "Investigator"**

"Investigator" means a member of the staff of the Commission so entitled by the director.

**E. "Hearing Examiner"**

"Hearing Examiner" means an impartial person appointed to conduct appeals, public hearings and default procedures.

**F. "Notice"**

Except when otherwise provided herein, notice of any action, decision, or proceeding required by these regulations shall be deemed to have been properly served by:

(1) **Mailing** Mailing by first class mail postage pre-paid or by certified mail, return receipt requested; or

(2) **Personal Delivery** Personal delivery to the addressee so that actual receipt of this notice is made within a reasonably prompt time period and within any time period required by these regulations.

**G. "Time"**

In computing any number of days described in these regulations or in any order of the Commission the day of the act or event is not included. The count begins on the day after the act or event occurred. Saturdays, Sundays, and City holidays shall be counted only when the period described is more than seven days. When the last day computed would fall on a Saturday, Sunday, or City holiday, the period shall extend to the first day thereafter which is not a Saturday, Sunday, or City Holiday.



## 02. COMPLAINTS

### A. Who May File

Any person or organization whose membership includes any person who claims to have been aggrieved by an act or acts of unlawful discrimination proscribed by Article 4 may file a written complaint. The Commission may also issue a written complaint whenever it has reason to believe that any person has engaged or is engaging in an unlawful practice under Article 4.

### B. Manner of Filing

A person shall file a complaint at the office of the Commission in person; or by his/her attorney; or by registered, certified, regular, electronic mail, or personal delivery to the office of the Commission.

### C. When Filed

Complaints shall be filed within 180 days from the date of the occurrence of the alleged unlawful discrimination. If the alleged unlawful discrimination is of a continuing nature, the date of the occurrence of this alleged unlawful discrimination shall be deemed to be any date up to and including that date on which the alleged unlawful discrimination shall have ceased.

### D. Transfers from the EEOC

In accordance with the Commission's contract and work-sharing agreement with the U.S. Equal Employment Opportunity Commission (EEOC), complaints that are jurisdictional for the Commission may be transferred from the EEOC to the Commission for processing. Such complaints are considered to be dual-filed with both agencies. In accordance with the terms of the aforementioned work-sharing agreement, the complaint shall be processed by only one agency. However, complainants may request, in writing, that the EEOC review the Commission's process for sufficiency within 15 days of receiving a closure notice from the Commission.

### E. Form

(1) **How Filed** A complaint may be filed on a form provided by the Commission. That form may be paper or electronic. Commission staff may assist the complainant or persons filing on the behalf of the complainant in filling out forms. Complaints filed on forms provided by other human relations commissions, including federal civil rights agencies, shall be deemed complaints filed with the Commission.

(2) **How Signed and Affirmed** The complaint shall be signed by the complainant or by his/her attorney and shall be under oath, if filed on a paper form. If filed electronically, the complaint shall be signed and affirmed electronically.

(3) **How Amended** A complaint may be amended to correct technical defects or omissions including, but not limited to, failure to swear to the complaint, to clarify and amplify allegations made and/or to allege additional acts which constitute unlawful discrimination under Article 4 which are related to or grow out of the subject matter of the original complaint. All of these amendments shall relate back to the original filing date.

#### **F. Review and Authorization**

After a complaint is filed the Director shall:

- (1) Review the complaint to determine its validity under Article 4 and, in cases where the complaint is deemed valid, authorize the Commission staff to investigate by signing the authorization form; or...
- (2) In cases where complaints are deemed invalid and not susceptible to amendment, reject the complaint and explain to the complainant the reason(s) for the rejection.

#### **G. Notice**

- (1) After authorization of a complaint by the Director and not more than 180 days from the date on which the complaint was filed, the Commission staff shall provide notice of it by serving a copy of the complaint upon the respondent by certified mail, return receipt requested.
- (2) If timely notice is not made in accordance with regulation 02.G (1), supra, the Respondent may, within 30 days from the date of receipt of the complaint, file a motion to dismiss the complaint, supported by a written memorandum to the Director. The Director shall consider the motion without oral argument and either grant or deny the same after considering other factors whether the respondent was unduly prejudiced by the lack of timely notice. The Director's decision will be provided to the complainant and the respondent.

#### **H. Withdrawal**

Subject to the approval of the Commission, a complaint may be withdrawn in writing at any time by the complainant or his/her attorney.

#### **I. Administrative Dismissal**

The Commission may administratively dismiss a complaint under those circumstances in which, by way of example but not limitation, the complainant fails to cooperate with staff or fails to keep staff informed of his/her whereabouts, or in cases where the respondent has ceased to exist and there is no practical purpose in pursuing the matter.

- (1) **Notice of Anticipated Administrative Dismissal** Notice of an anticipated administrative dismissal shall be sent to the complainant by (a) first

class mail at his/her last known address, and (b) electronic transmission informing the complainant of his/her right to object the dismissal within 30 days of the date the notice was mailed.

(2) **Objection** If the complainant makes an objection, within the time required, the staff shall consider the objection, and shall thereafter either continue the investigation, or recommend to the Commission that the case be administratively dismissed.

(3) **Dismissal** In the absence of a timely objection, the Commission shall dismiss the complaint.

(4) **Notice of Administrative Dismissal** Notice of administrative dismissal shall be sent to the respondent and complainant.

### 03. INVESTIGATIVE PROCESS

#### A. Investigations

Upon authorization of a complaint, the Director or designee shall assign, or cause to be assigned, the investigation of the complaint to an investigator who shall promptly endeavor to gather all information necessary and relevant to the making of a fair and objective determination of the alleged discrimination. This investigation shall conclude with a written finding of fact. However, written findings may not be required for any complaint which is withdrawn or dismissed under regulations 02.H and 02.I, supra, or 04, infra.

#### B. Fact Finding Conferences

The Director, at his or her discretion, may require the complainant and respondent to appear at a fact finding conference convened to define the issue or issues contained in the complaint, to determine which elements are undisputed, to resolve those issues which are susceptible of resolution, and to ascertain whether there is a basis for a negotiated settlement of the complaint. Failure to appear by the respondent will trigger default procedures. Failure to appear by the complainant will trigger administrative dismissal procedures.

#### C. Respondent's Answer

The respondent is expected to file answers to the allegations set forth in the complaint within 30 days after service of the complaint. Upon written application to the investigator, before the expiration of the 30 days, the respondent or his/her attorney, for good cause shown, may request to extend the time to file an answer by up to 15 days. The answer shall address the specific issues in the complaint. Any allegation in the complaint that is neither admitted nor denied by the respondent in answer shall be deemed admitted unless qualified by a statement that the respondent is without sufficient knowledge or information to admit or deny the allegation. Failure to answer will trigger default procedures.

#### D. Requests for Information

(1) **Service** The Investigator may, upon authorization of the Director, serve a request for information (RFI) on the respondent by certified mail, return receipt requested, or personal delivery. Said RFI shall state the date on which a response is required, which date shall be within 30 days of the date the RFI was served on the respondent.

(2) **Answer** The RFI shall be answered within the time prescribed in the accompanying notice and shall be under oath. A time extension may be granted for good cause shown and upon a written request submitted to the Director. Failure to answer will trigger default procedures.

(3) **Additional Requests for Information** The Commission staff may authorize and promulgate subsequent RFIs upon a determination that they are relevant and necessary to complete the administrative process.

#### E. Interrogatories

(1) **Service** The Investigator may, upon authorization of the Director, serve interrogatories on the respondent by certified mail, return receipt requested, or personal delivery. Said interrogatories shall state the date on which a response is required, which date shall be within 30 days of the date the interrogatories were served on the respondent.

(2) **Answer** The interrogatories shall be answered within the time prescribed in the accompanying notice and shall be under oath. A time extension may be granted for good cause shown and upon a written request submitted to the Director. Failure to answer will trigger default procedures.

(3) **Additional Interrogatories** The Commission staff may authorize and promulgate subsequent interrogatories upon a determination that they are relevant and necessary to complete the administrative process.

(4) **Motions to Strike and Exceptions** The respondent may file a motion to strike or take exception to the interrogatories within the time period set forth in Regulation 03.E (1), *supra*. The motion or exception shall state the reason or reasons therefore and shall be supported by a memorandum of points and authorities. The Director shall rule on the motion papers with or without oral argument. If the motion or exception is granted, the interrogatories may be limited, modified, or stricken in accordance with the order of the Director. If the motion or exception is denied, or, if the order of the Director requires the respondent to answer any portion of the interrogatories, the respondent shall be given no more than 10 days from the date of receipt of the order to answer the interrogatories.

## F. Default Procedures

**(1) Notice of Pending Default** If, after the respondent has been served with a duly authorized request, as set forth in sections 03.B, 03.D, and 03.E, *supra*, and the respondent fails to satisfy that request within the time specified or ask for an extension, the Director shall serve or cause to be served upon respondent the following notice:

“Notice is hereby given that a complaint has been served upon you alleging that you have violated Article 4, Baltimore City Code. Pursuant to this Commission’s authority under Article 4, a [fact finding conference request] [request for information] [set of interrogatories] has been served upon you. [You failed to appear for the fact finding conference. Your failure to contact the Director to arrange a fact finding conference] [This request for information has not been answered. Your failure to answer fully the request for information] [These interrogatories have not been answered. Your failure to answer fully the interrogatories] within five days of your receipt of this notice may result in the entry of a default in the matter of this complaint. This default order may include the following sanctions:

“(a) An admission that the [fact finding conference] [request for information, if answered,] [interrogatories, if answered,] would have established facts consistent with the claim of the Complainant;

“(b) A waiver of your right to have this Commission conduct further investigation, find whether or not there is probable cause, make conciliation efforts, or hold a public hearing allowing the presentation of any and all defenses to the complaint which you might otherwise have raised;

“To avoid a default, you must [contact the Director to arrange a fact finding conference] [answer fully the request for information] [answer fully the interrogatories] on or before the fifth day following the date of your receipt of this notice.”

**(2) Certification and Petition to Hearing Examiner** Upon failure by the respondent to satisfy a request for information or set of interrogatories or to make a written request for extension, the Director shall certify the case file and forward the same to the appropriate counsel. Counsel shall prepare a petition to the hearing examiner seeking a default order attaching the case file along with an affidavit by the Director which shall include:

(a) A statement that the complaint has filed the allegations of discriminatory practices within the time prescribed by Article 4, Baltimore City Code;

(b) The date of service of the complaint on the respondent and the date of service of any notice requiring answers, or extending the time in which to answer them or all of the above.

(c) The date of service of the complaint and requests for answers from the return of process;

(d) A statement that the respondent has failed to satisfy the requests for answers within the time prescribed; and

(e) A statement that the respondent has been given notice of the consequences of failure to satisfy the requests;

(3) **Determination** The hearing examiner shall thereupon determine whether the respondent is in default and shall serve a copy of the determination on the respondent and the complainant.

(4) **If No Default Determined** If the hearing examiner determines that the respondent is not in default, he/she shall deny the petition and return the case file to the Director for further investigative proceedings.

(5) **If Default Determined** If the hearing examiner determines that the respondent is in default, the hearing examiner shall hear the complainant's evidence in support of his/her allegations of discrimination, as a finding of probable cause has been deemed waived by the respondent, and a failure of conciliation has been presumed by the respondent's default. The public hearing to be subsequently held on the merits of the complaint shall be limited to whatever sanctions may be applied pursuant to Section 4-3(e) of Article 4 of Baltimore City Code.

#### **G. Subpoenas**

If the completion of an investigation requires the issuance of a subpoena, the investigator may, upon the written authorization of the director, issue a subpoena and testificandum to compel the attendance and testimony of witnesses, or a subpoena deces tecum, or both to compel the production of books, papers, records, and documents relevant and necessary to the investigation. Service of said subpoena(s) shall be made by the sheriff or deputy sheriff of Baltimore City. If a subpoena needs to be served outside the city, a process server or local sheriff could be employed to serve that subpoena. Upon the failure of the subpoenaed person to comply with the subpoena, the Commission staff may apply to the Circuit Court of Baltimore City for an order compelling compliance with the subpoena. All subpoenas issued shall contain the following:

(1) The name of the person whose testimony is required, identification of the books, papers, records, and documents to be submitted, or both;

(2) The place to appear, and the time and date to produce the information sought, which date shall not exceed 30 days after which the subpoena was received unless otherwise agreed; and

(3) The signature of the Director authorizing the issuance of the subpoena.

#### **H. Review by Commission's Counsel**

At any time during the process of a complaint the Director may forward the entire file to the Commission's counsel for the purpose of reviewing said file and making recommendations regarding its processing. The Commission's counsel shall, in a timely manner, reduce such recommendations to writing stating clearly the issues requiring further action.

#### **I. Consolidation of Complaints**

The Commission Chairperson may consolidate several complaints against the same respondent when it is found through investigation that sufficient common issues of fact or law or both are involved.

### **04. PRE-DETERMINATION SETTLEMENT**

#### **A. Purpose**

In the interest of promoting a prompt and just resolution of the complaints brought, the respondent and complainant(s) are encouraged to attempt to negotiate a settlement of the subject complaint before considerable time and effort required by a full investigation is spent.

#### **B. How Commenced**

At any time before the issuance of a written finding of fact, either the respondent or the complainant(s) may offer a proposal for settlement. The Commission staff shall convey said offer to the other party in hope of settling the matter. Commission staff may also initiate a proposal to resolve the matter. Staff may require that the complainant(s), the respondent, or both, submit information which will facilitate an understanding of the facts which will promote resolution.

#### **C. Settlement Agreement**

If the negotiations result in settlement, the parties may execute a written agreement setting forth the terms of the settlement which is approved and signed by the Director. The agreement will then be submitted for approval by the Commission, and if approved, shall issue an order to the respondent to comply with the terms of the agreement.

### **05. FINDINGS OF FACT**

#### **A. Written Findings of Fact**

The results of the investigation shall be set forth in a written report entitled "Finding of Fact" approved and signed by the Director which shall chronicle the facts found to exist and the conclusions drawn therefrom.

#### **B. Preliminary Findings of Fact – Opportunity to Discuss and/or Respond**

Prior to the issuance of a finding of fact, in an attempt to reconcile any and all matters in dispute, the investigator shall provide the complainant, in the case of an anticipated "No Probable Cause" finding, and the respondent, in the case of an anticipated "Probable Cause" finding, an opportunity to discuss and/or to respond to the preliminary findings of the investigator.

#### **C. Notice of Findings of Fact**

If a "No Probable Cause" finding of fact is issued, notice and copies of the "No Probable Cause" finding shall be sent to both the complainant and respondent. If a "Probable Cause" finding of fact is issued, notice shall be sent to both the complainant and respondent, and said notice shall remind the parties that the respondent has 30 days to file exceptions to the finding, pursuant to Section 05.D, *infra*. A copy of the "Probable Cause" finding also shall be sent to the respondent and may be sent to complainant at the discretion of the Director.

#### **D. Exceptions**

If the finding of fact concludes that there is probable cause to believe that a discriminatory act had been or is being committed (i.e. a "Probable Cause" finding), the respondent may file written exceptions to the finding. Said exceptions shall be filed within 30 days after the finding is delivered to the respondent and shall be accompanied by a written memorandum of law and fact stating in clear terms the basis upon which the exceptions are taken. Upon receipt of such exceptions, the Director shall review the entire file and the exceptions and in his/her discretion issue a written determination thereon. The exceptions may be accepted and a finding of "No Probable Cause" issued, the expectations may be denied and the finding of "Probable Cause" sustained, or the case may be remanded to staff for further investigation. Both the respondent and complainant shall be notified of the Director's determination.

### **06. APPEALS FROM FINDINGS OF "NO PROBABLE CAUSE" AND "NO JURISDICTION"**

#### **A. Time to File an Appeal**

A finding of "No Probable Cause" or "No Jurisdiction" may be appealed if a written request thereof is received by the Commission within seven days of the complainant's receipt of the finding.

#### **B. Appeals Proceeding**

All appeals shall be heard in closed session by a hearing examiner who shall have no personal interest in the matter.

#### **C. Appeals Decisions**



The hearing examiner may either affirm the staff's finding or remand the case to the staff for further investigation. The decision of the hearing examiner and the basis for his/her decision shall be communicated to the respondent and the complainant.

#### **D. No Successive Appeals**

However, no case may be appealed more than once. A case that has been appealed and remanded for further investigation, may not be further appealed in event of a subsequent finding of no probable cause or no jurisdiction. Such a case will, thereupon, be referred for Commission approval.

### **07. CONCILIATION (UPON FINDING OF PROBABLE CAUSE)**

#### **A. Notice of Opportunity to Conciliate**

Upon the issuance of a finding of probable cause, the parties shall begin the conciliation process to negotiate a just resolution of the alleged discriminatory practice. The Commission staff shall send the notice of the opportunity to conciliate by first class mail to the respondent and complainant.

#### **B. Remedies**

A full remedy must be sought in each case in which the Director has issued a finding of probable cause. The Director and his/her staff may fashion remedies from the wide range of remedial measures available under Article 4 and other relevant laws, and tailor remedies, as necessary, to cure specific situations giving rise to the finding. Where the finding pertains to an unlawful employment practice, remedies may include, but are not limited to, the elimination of the unlawful practice, upgrading, or reinstatement of the employee discriminated against, with or without back pay, hiring, or acceptance in any respondent labor organization, as the situation may warrant. Where the finding pertains to another unlawful practice, remedies may include, but are not limited to, the elimination of the unlawful practice, reinstatement of lost housing or services or benefits, injunctive relief, compensatory damages, and damages for pain and suffering. Reasonable compromises or counter-proposals may be considered by the Commission if they are justified by the relevant facts and law.

#### **C. Conciliation Agreement**

If an agreement is reached, the agreement shall be reduced to writing and signed by the respondent, the complainant and the Director. If said agreement is approved by a vote of the Commission, an order shall be entered by the Commission, an order shall be entered by the Commission encompassing the agreement. If said agreement is not approved by the Commission, it shall be returned to the staff for further negotiation.

#### **D. Failure or Refusal to Seek Conciliation**

If a respondent fails or refuses to confer with the Commission staff, or refuses to make a good faith effort to resolve the dispute in a timely fashion, the Director may terminate the conciliation attempt, notify the parties that conciliation has failed, and certify the case for public hearing pursuant to regulation 08., infra.

## 08. PUBLIC HEARING (UPON FAILURE TO CONCILIATE)

### A. Certification

If staff's efforts to reach an agreement fail, a written "Finding of Failure to Agree" shall be made and the entire file, including the complaint and any and all findings made, shall be certified to the Commission Chairperson.

### B. Consolidation of Complaints

Prior to a public hearing, the Commission Chairperson may consolidate several complaints against the same respondent when it is found that sufficient common issues of fact or law or both are involved.

### C. Hearing Examiner

After the issuance of a written finding of failure to agree, the Director shall appoint an impartial person as hearing examiner.

### D. Pre-Hearing Conference

(1) **Notice** The Director shall notify the hearing examiner, respondent and counsel for the Commission of the date and time for the pre-hearing conference.

(2) **Procedural Considerations** The hearing examiner may consider any reasonably expeditious means to conduct the pre-hearing conference including, but not limited to:

- (a) The simplification and clarification of issues;
- (b) The exchange and acceptance of service of exhibits proposed to be offered in evidence;
- (c) An agreement by stipulation as to facts and authenticity of documents not in dispute;
- (d) The limitation of the number of witnesses; and
- (e) The discovery or production of evidence.

(3) **Mandatory Attendance** The respondent and counsel to the Commission shall attend the pre-hearing conference fully prepared to discuss all issues involved in the proceeding. Failure to attend, in the absence of good cause, shall constitute a waiver of all objections to any order or ruling as a result of the pre-hearing conference.

(4) **Rulings on Procedural Matters** The hearing examiner may rule upon procedural matters and, where it appears that the proceeding would be

substantially expedited, may direct the terms of any pre-hearing distribution of exhibits, affidavits and similar materials.

(5) **Motions** All preliminary matters shall be raised by motion at or before the time of the pre-hearing conference and shall be in writing, stating briefly the relief sought and the grounds upon which the motion is based. The motion and two copies thereof, together with an affidavit of personal delivery or mailing to either the respondent or counsel to the Commission, shall be filed with the hearing examiner.

(6) **Answers** Any answer should be mailed or personally delivered to the other party and the hearing examiner. The original and two copies thereof, with an affidavit of service to the respondent or counsel for the Commission, shall be filed within seven days of receipt of the original motion unless otherwise directed by the hearing examiner.

(7) **No Oral Argument** All motions shall be decided by the hearing examiner without oral argument.

#### **E. Notice of Public Hearing**

The hearing examiner shall send by certified mail, return receipt requested, notice of the public hearing to the respondent and the complainant. Said notice shall state the time and date for the public to begin, however, no public hearing shall be scheduled less than 10 days, or more than 60 days, from the date of receipt of the notice unless agreed to by the respondent and counsel for the Commission.

#### **F. Discovery**

Either the respondent or the counsel for the Commission, by written request served upon the other party and filed with the hearing examiner, may require the other party and filed with the hearing examiner, may require the other party to produce, within 15 days for inspection, copying or photocopying, any document, object or other tangible thing which is relevant and necessary to the subject matter of the complaint or answer, and which is not shown to be privileged. Any objections thereto shall be in writing and filed with the hearing examiner within five days of the request with a copy served upon the other party. On motion of the requesting party, the hearing examiner shall rule with respect thereto.

(1) The hearing examiner shall, with or without motion by counsel, make such protective order as justice and fairness may require, denying, limiting, conditioning, or regulating discovery to prevent unreasonable annoyance, expense, embarrassment, disadvantage or opposition.

(2) The hearing may not be delayed because of any party's inability to complete discovery unless the hearing examiner determines that the party has shown due diligence in his/her efforts to efforts to comply.

#### **G. Subpoenas Issued Pursuant to the Public Hearing**

The Commission may, on its own behalf or at the request of the respondent, issue subpoenas to compel the attendance of witnesses and/or the production of records or documents.

#### H. Conduct of the Public Hearing

- (1) All hearings held pursuant to the default procedures, 03.F, supra, or failure of conciliation, 07. , supra, shall be open to the public, and notice of the public hearing may be sent to the news media upon the scheduling of the hearing date.
- (2) Both the Commission, representing the complainant, and the respondent may be represented by the counsel with the right to examine and cross-examine witnesses, to submit rebuttal evidence and to introduce evidence into the hearing. For public hearings held pursuant to the default procedures, 03.F, supra, respondent's rebuttal evidence on sanctions may include evidence rebutting allegations of the underlying discriminatory conduct.
- (3) At the discretion of the hearing examiner, the hearing may be continued from day to day or adjourned to a later date.
- (4) Any competent and material testimony taken at the hearing shall be under oath and recorded.
- (5) The hearing examiner may admit evidence with probative value, giving effect to the rules and privileges recognized by law, and excluding incompetent, immaterial and unduly repetitious or prejudicial evidence. Documentary evidence may be received in the form of originals, copies or excerpts of incorporation by reference.
- (6) Formal exceptions to the rulings on objections made are not necessary and may be disallowed by the hearing examiner.
- (7) At any stage of the hearing, the hearing examiner may require or authorize further evidence to be submitted upon such terms as are deemed proper.
- (8) The hearing examiner may take judicial notice of recognizable facts. The parties shall be notified of the material notice before or during the hearing.
- (9) At the conclusion of the evidence, the hearing examiner shall permit the counsels to make closing arguments upon request. The hearing examiner may request that the counsels submit written briefs within such time as the hearing examiner deems fair, such time not to exceed 30 days, except upon showing of good cause.

#### I. Decisions

- (1) The final decision shall be reduced to writing and shall set forth the evidence and the facts upon which it is based, and shall be certified to the Commission. In the event no order for a written brief was issued, the hearing examiner shall set forth his/her decision within 60 days after the conclusion of the hearing.
- (2) The decision may not be subject to further review by the Commission.
- (3) In the event the hearing examiner finds that an unlawful practice is being or had been committed, his/her decision shall include a recommended order to be issued by the Commission in accordance with Section 4-3(e) of Article 4, Baltimore City Code. The Commission shall thereupon issue such order and require compliance within a reasonable time.
- (4) In the event the hearing examiner finds that an unlawful practice has not occurred, the case shall be dismissed.
- (5) A copy of the hearing examiner's decision and all orders shall be sent to the respondent and complainant by certified mail return receipt requested.