

DEPARTMENT OF STATE
HUMAN RELATIONS COMMISSION

Statutory Authority: 6 Delaware Code, Section 4506 (6 Del.C. 4506)
1 **DE Admin. Code** 1501 and 1502

FINAL
ORDER

1501 Equal Accommodations Regulations

A public hearing was held on September 11, 2008 to receive comments related to proposed amendments to the Equal Accommodations Regulations of the State Human Relations Commission ("Commission").

The Commission, in accordance with 29 **Del.C.** Chapter 101 and 6 **Del.C.** §4506, proposed amendments to the Equal Accommodations Regulations to clarify hearing procedures and to comply with changes to "The Delaware Equal Accommodations Law" 6 **Del.C.** Chapter 45, and 31 **Del.C.** Chapter 30, and other items. The changes are required to clarify hearing procedures and to comply with changes to "The Delaware Fair Housing Act" 6 **Del.C.** Chapter 46, and 31 **Del.C.** Chapter 30, and other items. These amendments if approved will become part of the Commission's Regulations.

Pursuant to the Administrative Procedures Act, 29 **Del.C.** §10115, notice of the proposed amendments to the Regulations was published on August 1, 2008 in the *Delaware Register of Regulations*, Volume 12, Issue 2 as well as in the *News Journal* and *Delaware State News* on August 7, 2008.

Commission Chair Calvin Christopher conducted the public hearing on Thursday, September 11, 2008 at 7:00 p.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904.

Summary of the Evidence and Information Submitted

1.2: Addition of definition of "Minor"

"**Minor**" means a person under the age of eighteen years who has not been court emancipated.

3.1: Removal of "or notice of intention to pursue no-fault settlement" to read:

3.1 The Respondent shall file a written response to the complaint, on a form provided by the Division within twenty (20) days of receipt of service of the complaint.

4.1: Change to: "The Complaint may be amended at any time."

5.1.1: Removal of "or notice of intention to pursue no-fault settlement" so that it will read:

5.1.1 A case may be dismissed by the Complainant without order of the Commission by filing a notice of dismissal at any time before service of a response to the complaint or by filing a stipulation of dismissal signed by all Parties who have appeared in the case. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a Complainant who has once dismissed a case before the Commission based on or including the same claim. A Complainant who dismisses a case pursuant to this paragraph without prejudice may refile a complaint within ninety (90) days after the occurrence of the alleged Discriminatory Public Accommodation Practice.

5.1.2: Removal of "or notice of intention to pursue no-fault settlement" so that it will read:

5.1.2 After the Respondent has filed a response to the complaint, a case shall not be dismissed at the Complainant's request except upon order of the Commission or upon order by a single Commissioner authorized

by the Commission prior to the appointment of a Panel and upon such terms and conditions as the Commission deems proper. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

7.1: Change "conciliation" in the fourth line to "fact-finding" such that 7.1 will read:

7.1 The opportunity to conciliate or settle a case is available at any stage of the complaint process and may include a no-fault settlement offer. The Complainant(s) shall be notified of the opportunity to conciliate when a complaint is filed, and the Respondent(s) shall be so notified when a complaint is served. Staff shall schedule an informal fact-finding conference to be held with the Complainant(s), the Respondent(s) and, if they so choose, attorneys representing them, within thirty (30) days after the receipt of the response to the complaint, unless it is impractical to do so.

8.5: Change "ten days" to "20 business days" such that 8.5 will read:

8.5 As provided in 6 **Del.C.** § 4510, a subpoena shall be issued upon written request by any Party, Staff or Panel member. Such requests shall be submitted no later than twenty (20) business days in advance of the hearing. Witnesses and documents requested in the subpoena must be clearly described in writing. The consequence of failure to request a subpoena in a timely fashion shall be subject to the discretion of the Panel.

8.8: Change "ten days" to "20 business days" such that 8.8 will read:

8.8 A written list of witnesses a Party intends to call during a panel hearing must be delivered to the office of the Division of Human Relations where the complaint was filed and to all other Parties at least twenty (20) business days prior to a hearing.

8.14: A new provision was added such that 8.14 will read:

8.14 Testimony shall be under oath or affirmation administered by the court reporter. If a court reporter is not present, witnesses shall be sworn in by the Panel Chair.

Comments Concerning Equal Accommodations Regulations

Written Comment:

Public comments were received from three sources. All of the comments were made in writing, were timely received by the Commission, and were exactly the same. Comments were received from: Jamie Wolfe, Chair of the Delaware Developmental Disabilities Council dated April 16, 2008; Robert D. Overmiller, Chairperson of the Governor's Advisory Council for Exceptional Citizens dated April 22, 2008; and, Daniese McMullin-Powell, Chairperson of the State Council for Persons with Disabilities dated May 1, 2008. Jamie Wolfe, Chair of the Delaware Developmental Disabilities Council provided additional written comments in a letter dated August 18, 2008. The comments were as follows:

1. In the "Introduction" section, first sentence, delete "under".

2. In the "Introduction" section, last sentence, the HRC recites that the revised regulations will apply to causes of action arising under the Equal Accommodation Act after May 8, 2008. Section 11.3 explicitly applies the APA to any amendment to the existing regulations. Under the APA, non-emergency regulations cannot become final until "10 days from the date the order adopting, amending or repealing a regulation has been published in its final form, in full or as a summary, in the Register of Regulations..." See Title 29 **Del.C.** §10118(g). With a public hearing scheduled for May 8, the earliest final regulations could be published in the Register is June 1, 2008. If the HRC is confident of publication of the final regulation in the June Register, it could consider adoption of an effective date of approximately June 11.

3. A period should be inserted at the end of §1.2 definition of "minor".

4. The HRC should consider deletion of the definition of "Persons Entitled to Protection" in §1.2. I could not locate any reference to the term in the regulations and the definition is therefore superfluous. Moreover, the definition is oddly worded. It essentially states that all persons in Delaware are protected. Finally, the term "handicap" should be deleted to comport with the deletion of "handicap" in §1.1 based on Title 6 **Del.C.** §4502(6).

5. §2.6.3 is "underinclusive". It refers to "owner, lessee, proprietor, manager or superintendent". The statute [Title 6 **Del.C.** §4504(a)(b)] now includes the following: director, supervisor, agent or employee.

6. §2.8 recites that service of the complaint shall be made in accordance with "12.2 of these Regulations". There is no §12.2 in the Regulations.

7. §4.3, substitute "attorneys" for "attorney".

8. In §5.1.8, first sentence, substitute "to" for "on" after "due".

9. §5.1.10 is "underinclusive". It only refers to a right of appeal of an order dismissing a complaint by "the Panel" while §5.0 includes circumstances under which dismissal can be authorized by "a single Commissioner" (§5.1.2) or Panel Chair or designee (§5.1.6). The HRC could consider amending §5.1.10 as follows: "Any final order dismissing a complaint under this section is subject to Superior Court review pursuant to 6 **Del.C.** §4511."

10. In §7.1, third sentence, retain the word "conciliation" rather than substituting "fact-finding" because:

A. The title of Regulation 7.0 is "Conciliation".

B. Conciliation is different from fact-finding. Compare the HRC's Fair Housing regulations. A "fact-finding" conference is part of investigation (§4.3) which is distinct from "conciliation" (§5.0).

C. The Equal Accommodations statute refers to "conciliation" (§4507) and includes a helpful definition of "conciliation" [§4502(4)]. There is no definition of "fact-finding".

D. The conference under §7.0 may involve no "fact-finding" whatsoever (e.g. facts may be undisputed) and settlement terms could be the sole topic of discussion.

11. §8.5 changes the time period to request a subpoena from 10 calendar days to 20 business days prior to hearing. This is a long time. It would be less objectionable if there were a regulation establishing a long notice of hearing timeframe (e.g. minimum of 60 days). Otherwise, if a party were provided 30 calendar days notice of hearing, there would be no time to request a subpoena. A compromise would be 15 business days. Since §11.0 converts periods of less than 11 days to "business days", the current 10 calendar day standard is essentially 10 business days. A 15 business day standard would amount to an extension of 5 business days in the regulation.

12. §8.6 authorizes, "another person who is not a Party" to serve a subpoena. This conflicts with Title 6 **Del.C.** §4510(a), first sentence.

13. We recommend adopting the same time frame for disclosure of witnesses and exhibits under §§8.8 and 8.10. As a practical matter, this will generally result in a single combined submission rather than two submissions. Moreover, the interests served by the advance disclosure are the same. We recommend amending §8.8 by establishing a 10 business day standard to conform to the 10 business day standard in §8.10. This would be the same timetable adopted in the HRC's Fair Housing regulations, §§10.1 and 10.2.

14. §8.9 categorically precludes consideration of any motion not delivered 10 business days prior to hearing. This is too rigid. Literally, a party could not even file a motion for a continuance based on good cause 9 business days prior to hearing. In all other contexts, the Commission reserves discretion in addressing late submissions. See §§8.2 and 8.5 and 8.10.1. The no-exceptions approach also creates conflict with §11.1.2.

15. The HRC Fair Housing regulation (§10.1.1) authorizes a panel to inspect or view the location involved in the case. This could be particularly helpful in an accessibility dispute. The HRC may wish to amend §8.10 to incorporate such an authorization in the Equal Accommodation standards.

16. In §9.3, first sentence, some words are missing. Insert "any Party" after "order".

Verbal Comment:

None.

Recommended Findings Of Fact Based On The Evidence And Information Submitted

The following are findings based on the specific comments received.

1. In the "Introduction" section, first sentence, delete "under".

This stylistic change was not necessary. Therefore the Commission rejected the change.

2. In the "Introduction" section, last sentence, the HRC recites that the revised regulations will apply to causes of action arising under the Equal Accommodation Act after May 8, 2008. Section 11.3 explicitly applies the

APA to any amendment to the existing regulations. Under the APA, non-emergency regulations cannot become final until "10 days from the date the order adopting, amending or repealing a regulation has been published in its final form, in full or as a summary, in the Register of Regulations..." See Title 29 **Del.C.** §10118(g). With a public hearing scheduled for May 8, the earliest final regulations could be published in the Register is June 1, 2008. If the HRC is confident of publication of the final regulation in the June Register, it could consider adoption of an effective date of approximately June 11.

This change was required and the date changed to October 10, 2008, ten days after the Order amending the Regulations will be published in the *Register of Regulations*.

3. A period should be inserted at the end of §1.2 definition of "minor".

This change was made.

4. The HRC should consider deletion of the definition of "Persons Entitled to Protection" in §1.2. I could not locate any reference to the term in the regulations and the definition is therefore superfluous. Moreover, the definition is oddly worded. It essentially states that all persons in Delaware are protected. Finally, the term "handicap" should be deleted to comport with the deletion of "handicap" in §1.1 based on Title 6 **Del.C.** §4502(6).

The definition at issue is "Persons Entitled to Protection" means all persons within the jurisdiction of this State regardless of the race, age, marital status, creed, color, sex, handicap or national origin of such persons. The Commission agreed that this definition was not needed as it is contained in § 4503 of the statute.

5. §2.6.3 is "underinclusive". It refers to "owner, lessee, proprietor, manager or superintendent". The statute [Title 6 **Del.C.** §4504(a)(b)] now includes the following: director, supervisor, agent or employee.

This comment was accepted and §2.6.3 was changed to add "director, supervisor, agent or employee" so that the amendment reflects the current law.

6. §2.8 recites that service of the complaint shall be made in accordance with "12.2 of these Regulations". There is no §12.2 in the Regulations.

This change was made to §11.2 to correct a typographical mistake.

7. §4.3, substitute "attorneys" for "attorney".

This change was not made as Section 4.3 states, "Amended complaints and the answers shall be signed by the Party(s) or their the Party's attorneys. Since Party is singular, attorney should be singular, too.

8. In §5.1.8, first sentence, substitute "to" for "on" after "due".

The change was made in the second sentence to correct a typographical error.

9. §5.1.10 is "underinclusive". It only refers to a right of appeal of an order dismissing a complaint by "the Panel" while §5.0 includes circumstances under which dismissal can be authorized by "a single Commissioner" (§5.1.2) or Panel Chair or designee (§5.1.6). The HRC could consider amending §5.1.10 as follows: "Any final order dismissing a complaint under this section is subject to Superior Court review pursuant to 6 **Del.C.** §4511."

This change was made to 5.1.10 by removing "issued by the Panel" so that it now reads, "All orders resulting from an application for dismissal are subject to Superior Court review pursuant to 6 Del.C. § 4511." This change was needed because the added words are the same words contained in the statute such that the amendment reflects the current law.

10. In §7.1, third sentence, retain the word "conciliation" rather than substituting "fact-finding" because:

- A. The title of Regulation 7.0 is "Conciliation".

- B. Conciliation is different from fact-finding. Compare the HRC's Fair Housing regulations. A "fact-finding" conference is part of investigation (§4.3) which is distinct from "conciliation" (§5.0).

- C. The Equal Accommodations statute refers to "conciliation" (§4507) and includes a helpful definition of "conciliation" [§4502(4)]. There is no definition of "fact-finding".

- D. The conference under §7.0 may involve no "fact-finding" whatsoever (e.g. facts may be undisputed) and settlement terms could be the sole topic of discussion.

The Commission agreed with these changes for the reasons stated above by the commentators.

11. §8.5 changes the time period to request a subpoena from 10 calendar days to 20 business days prior to hearing. This is a long time. It would be less objectionable if there were a regulation establishing a long notice of hearing timeframe (e.g. minimum of 60 days). Otherwise, if a party were provided 30 calendar days notice of hearing, there would be no time to request a subpoena. A compromise would be 15 business days. Since §11.0

converts periods of less than 11 days to "business days", the current 10 calendar day standard is essentially 10 business days. A 15 business day standard would amount to an extension of 5 business days in the regulation.

The Commission agreed that 20 business days is a long time. For that reason, the Commission changed the time to 20 days which will include Saturdays, Sundays and Holidays such that the time will be closer to the 15 business days suggested by the public commentators. The parties will have more time rather than less time to request subpoenas.

12. §8.6 authorizes, "another person who is not a Party" to serve a subpoena. This conflicts with Title 6 **Del.C.** §4510(a), first sentence.

The Commission made this change so that §8.6 does not conflict with 6 **Del.C.** §4510(a). The first sentence of § 8.6 now reads, "Subpoenas may be served by any sheriff, deputy sheriff, constable or any member of the Commission or employee of the Division of Human Relations." The added words are the same words contained in the statute such that the amendment reflects the current law.

13. We recommend adopting the same time frame for disclosure of witnesses and exhibits under §§8.8 and 8.10. As a practical matter, this will generally result in a single combined submission rather than two submissions. Moreover, the interests served by the advance disclosure are the same. We recommend amending §8.8 by establishing a 10 business day standard to conform to the 10 business day standard in §8.10. This would be the same timetable adopted in the HRC's Fair Housing regulations, §§10.1 and 10.2.

The Commission agreed with the commentators but changed the time to 10 days so that the parties will have more time rather than less time to submit witnesses and exhibits.

The Commission found that it was not necessary to include the phrase "business days" since Regulation 11.1.1 states that "when the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and other legal holidays shall be excluded in the computation." For this reason, the definition of Business Days and all references to business days have been removed from the Regulations.

14. §8.9 categorically precludes consideration of any motion not delivered 10 business days prior to hearing. This is too rigid. Literally, a party could not even file a motion for a continuance based on good cause 9 business days prior to hearing. In all other contexts, the Commission reserves discretion in addressing late submissions. See §§8.2 and 8.5 and 8.10.1. The no-exceptions approach also creates conflict with §11.1.2.

The Commission accepted a middle ground such that Motions must be delivered at least 10 days before the hearing. In addition, the Commission agreed that whether or not motions untimely filed will be heard should be left to the discretion of the Hearing Panel. The second sentence was changed to, "Motions filed beyond this time limit may be considered at the discretion of the Panel."

15. The HRC Fair Housing regulation (§10.1.1) authorizes a panel to inspect or view the location involved in the case. This could be particularly helpful in an accessibility dispute. The HRC may wish to amend §8.10 to incorporate such an authorization in the Equal Accommodation standards.

The Commission made this change because such examination may be helpful to the Panel. The following new sentence was added to the end of section 8.10.1, "After commencement of the hearing, the Panel, in its discretion, may view or inspect exhibits or the location involved in a case."

16. In §9.3, first sentence, some words are missing. Insert "any Party" after "order".

The Commission made this change.

WHEREAS the State Human Relations Commission have voted to approve the proposed amendments to the Equal Accommodations Regulations;

IT IS THEREFORE ORDERED this 11th day of September, 2008, that the Amendments to the Equal Accommodations Regulations as attached as Exhibit A are approved and will become effective on October 10, 2008.

Calvin Christopher
Gail Launay
Shirley Horowitz
Wallace Dixon

Eastern Ramsey
Randall Perry
James Gray
William Johnston

Chok-fun Chui
Ralph Figueroa
Richard Senato
Earnest Gulab
Nancy Maihoff
Doug James
Katharine Cropper
Peter Schott

Robert Watson, Jr.
Whittona Burrell
Stephen Elkins
Prameela Kaza
Bernice Edwards
Marian Harris
Olga Ramirez

~~[4504 601]~~ Equal Accommodations Regulations

Introduction

These Rules and Regulations have been prepared pursuant to the powers granted the Human Relations Commission and are intended to meet the applicable requirements of the Administrative Procedures Act.

These Regulations shall govern individual cases over which the Human Relations Commission and the Division of Human Relations have jurisdiction pursuant to 6 **Del.C.** Ch. 45, as it may be amended from time to time.

These Regulations refer to "hearings" for case decisions only and are, therefore, to be distinguished from any other public hearings which may be held by the Commission to address general issues of public concern and which are not controlled by these Regulations.

These Rules and Regulations are specific to the processing of complaints of discrimination under the Delaware Equal Accommodations Law. The Commission believes these Rules and Regulations are necessary to ensure the appropriate administration of the Equal Accommodations Law.

These Regulations shall apply to Equal Accommodation causes of action arising under the Delaware Equal Accommodations Law on or after July 1, 1996. Delaware Fair Housing Act actions under 6 **Del.C.** Ch. 45 are not affected by these Regulations.

1.0 Definitions (~~Formerly Part I~~)

- 1.1 The following terms used in these Regulations shall have the same definitions as those terms contained in the Equal Accommodations Law, 6 **Del.C.** Ch. 45, §4502:

~~A place of public accommodation~~

Chairperson

Commission

Complainant

Conciliation

Conciliation Agreement

Disability

Discriminatory ~~p~~Public ~~a~~Accommodation ~~p~~Practice

Division

~~Handicap~~

Marital Status

Panel

Panel Chair

Place of Public Accommodation

Respondent

Special Administration Fund

- 1.2 As used in these Regulations, the following terms are defined:

"Commissioner" means a person duly serving as a member of the Commission.

“**Division Director**” means the administrator and head of the Division of Human Relations, or other person duly authorized to act as such.

“**Minor**” means a person under the age of eighteen years who has not been court emancipated.

“**Office**” means any one of the places of business of the Division of Human Relations.

“**Party or Parties**” means the Complainant(s) or Respondent(s).

“**Staff**” means a person ~~who is~~ or persons employed by the Division of Human Relations of the State of Delaware.

2.0 Commencement of Proceedings (~~Formerly Rules 1, 2, 3, 4, 5, 6 & 7~~)

- 2.1 Any person claiming to be aggrieved by discriminatory public accommodations practices within the jurisdiction of the Commission may file a written complaint with the ~~Commission~~ Division. Minors shall be represented by a parent, guardian or other responsible adult for the purpose of bringing an action.
- 2.2 The Commission and the Division may each initiate an investigation into compliance with the Equal Accommodations Law, whether or not a complaint is filed. If an investigation is initiated by the Commission, ~~Such investigations~~ may be initiated by written statement showing justification signed by the Chairperson or by such person as may be authorized by the Commission. In accordance with applicable provisions of the law, and to the extent practicable, the procedures in these Regulations shall apply to Commission-initiated and Division-initiated investigations.
- 2.3 A complaint shall be filed at any one of the places of business of the Division of Human Relations.
- 2.4 Complaints made with the Commission through the Division of Human Relations shall be in writing and deemed to be "filed" when received at the Division in substantially completed form.
- 2.5 All complaints must be filed on a complaint form provided by the ~~Office~~ Division.
- 2.6 All complaint forms shall include the following information:
 - 2.6.1 ~~The~~ complainant's name and address;
 - 2.6.2 ~~The~~ name and location of the place of public accommodation at which the discriminatory public accommodation practice(s) occurred, and the date, time and ~~other details~~ an explanation thereof; ~~and~~
 - 2.6.3 ~~if~~ known, the name and address of each Respondent and, if different, the name of the owner, lessee, proprietor, manager or superintendent of the place of public accommodations.
 - 2.6.4 The date of the first occurrence of the alleged discriminatory practice and whether the practice is of a continuing nature; ~~and~~
 - 2.6.5 The signature of the complainant or his/her attorney.
- 2.7 Complainants and Respondents must keep the Division of Human Relations informed of their current addresses and telephone numbers during the pendency of any proceedings.
- 2.8 Service of the complaint shall be made by the Division of Human Relations in accordance with 11.2 (~~Formerly Rule 30~~) of these ~~Regulations~~.

3.0 Response to Complaint (~~Formerly Rule 8~~)

- 3.1 Respondent shall file a written response to the complaint, on a form provided by the Division of Human Relations, or a notice of intention to pursue no-fault settlement, within twenty (20) days of receipt of service of the complaint.
- 3.2 Either of such documents shall be signed by the Respondent or Respondent's attorney and shall be filed at the Office of the Division where the complaint was filed, ~~showing~~ and shall provide proof that a copy has been served on the Complainant.

4.0 Amending a Complaint (~~Formerly Rule 9~~)

- 4.1 The ~~Complainant(s)~~ Complaint may be amended ~~a complaint~~ at any time ~~prior to service of the response on the Complainant(s); thereafter, amendment is subject to approval by the Panel Chair or the Chairperson of the Commission.~~

- 4.2 The Respondent shall serve an answer to any amended complaint within ten (10) days of receipt of service of the amended complaint, ~~whichever is greater~~, or within the time remaining to respond to the initial complaint, ~~whichever is greater~~.
- 4.3 Amended complaints and the answers shall be signed by the Party~~(s)~~ or their Party's attorney.

5.0 Case Closing Prior to Hearing (~~Formerly Rule 10~~)

- 5.1 Voluntary Termination and Dismissal
- 5.1.1 A case may be dismissed by the Complainant without order of the Commission by filing a notice of dismissal at any time before service of a response to the complaint or by filing a stipulation of dismissal signed by all ~~p~~Parties who have appeared in the case. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a Complainant who has once dismissed a case before the Commission based on or including the same claim. A Complainant who dismisses a case pursuant to this paragraph without prejudice may refile a complaint within ninety (90) days after the occurrence of the alleged discriminatory public accommodation practice.
- 5.1.2 After a the Respondent has filed a response to the complaint, a case shall not be dismissed at the Complainant's request except upon order of the Commission or upon order by a single Commissioner authorized by the Commission prior to the appointment of a panel and upon such terms and conditions as the Commission deems proper. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.
- 5.1.3 A case may be dismissed, upon notice of the Commission or of the Division, for lack of activity. Application shall be made in writing by the Division staff to a Panel ~~of~~ or if no Panel has been appointed, then to the Division Director ~~of~~ or Commission Chairperson, stating the reason for the proposed dismissal.
- 5.1.4 A case may be dismissed, upon notice of the Commission or of the Division, for failure of Complainant to cooperate upon application of the Division staff to the Panel or if no Panel has been appointed, then to the Division Director or Commission Chairperson. Failure to cooperate includes, but is not limited to, failure to keep the Division informed of Complainant's current address.
- 5.1.5 A case may be dismissed upon written application to the ~~Panel~~ Commission by the Respondent or the Division Director when
- 5.1.5.1 the Commission does not have jurisdiction to determine the case; or
- 5.1.5.2 the facts alleged do not state a violation of the law.
- 5.1.6 If the Division determines that the Commission does not have jurisdiction over the case or that the complaint does not allege facts that state a violation of the law, the Division Director shall apply in writing to the Panel Chair or designee (or, if a Panel has not been appointed, to the Chairperson or other designee), for dismissal of the complaint under Rule 5.1.5.
- 5.1.6~~7~~ An application for dismissal by the Respondent shall show proof of service of the application upon the Complainant and the Division. Complainant shall have 10 days after being served to respond to the Respondent and Commission. An application for dismissal by the Division shall show proof of service on all parties and all parties shall have 10 days after being served to respond to the Commission with proof of service to the Division.
- 5.1.7~~8~~ The Panel Chair or designee (or, if no panel has been appointed, the Commission Chairperson or other designee) shall A Panel ~~will convene to~~ consider the application for dismissal. ~~Unless directed by the Panel based on~~ In the absence of compelling or unusual circumstances, such consideration shall be without an evidentiary hearing or oral argument. The Panel Chair or designee (or, the Commission Chairperson or designee) will consider only the facts alleged in the pleadings or any related submissions and any reasonable inferences from those facts. The facts alleged by the claimant, unless conclusory, will be considered as true for the purpose of the dismissal proceeding.

5.1.89 All notices of case dismissals shall be served on all parties and shall include a statement of the right to appeal, to have the case reopened for good cause shown to the Panel, or if no Panel has been appointed, then to the Division Director or Chairperson.

5.1.10 All orders resulting from an application for dismissal are subject to Superior Court review pursuant to 6 Del.C. §4511.

7 DE Reg. 793 (12/1/03)

6.0 Investigation (~~Formerly Rule 14~~)

6.1 Investigation of the complaint shall be conducted by Staff and shall commence promptly after the filing of the complaint. Investigation may include, without limitation: interviews, questionnaires, fact finding conferences, searching of records, testing, identification of any witnesses, development of statistics, other studies of practices and patterns, or other work to gather relevant evidence.

6.2 Evidence sought by a subpoena issued in connection with an investigation must be relevant to the investigation, be adequately specified, and only cover a reasonable period of time.

7.0 Conciliation (~~Formerly Rules 12, 13 and 14~~)

7.1 The opportunity to conciliate or settle a case is available at any stage of the complaint process and may include a no-fault settlement offer. The Complainant(s) shall be notified of the opportunity to conciliate when a complaint is filed, and the Respondent(s) shall be so notified when a complaint is served. Staff shall schedule an informal conciliation conference to be held with the Complainant(s), the Respondent(s) and, if they so choose, attorneys representing them, within thirty (30) days after the receipt of the response to the complaint, unless it is impractical to do so.

7.2 (~~Formerly Rule 13~~) Conciliation shall be initiated upon request of any Party, or upon the request or recommendation of Staff or a member of the Commission.

7.3 (~~Formerly Rule 14~~) Any agreement achieved by conciliation shall be set forth in writing and shall specify the appropriate relief agreed upon by the Parties. Forms of relief may include, without limitation:

7.3.1 binding arbitration to resolve the dispute;

7.3.2 payment of damages; other monetary relief;

7.3.3 payment to the Special Administration Fund;

7.3.4 monitoring of the future activities of Respondent(s);

7.3.5 measures taken to ensure future compliance with the Equal Accommodations Law; and/or

7.3.6 such other relief as is agreed upon by the Parties.

7.4 Executed copies of such agreements shall be given to all Parties.

8.0 Hearings (~~Formerly Rules 15, 16, 17, 18, 19, 20, 21, 22 and 23~~)

8.1 The purpose of a hearing is:

8.1.1 to hear argument;

8.1.2 where appropriate, to receive evidence and determine facts; and

8.1.3 in all events to render an adjudication in accordance with applicable law.

8.2 If a complaint cannot be resolved through conciliation, as provided in Section 4508(c) of the Delaware Equal Accommodations Law, the Commission shall appoint a Panel to hold a public hearing within 60 days after the expiration of the 120-day period for investigation and conciliation. The deadlines provided in Section 4508(c) and Section 4508(e) may be extended by the Chairperson or if a Panel has been appointed by the Panel Chair at the request of any Party or Staff upon a showing of good cause.

8.3 The date, time, place and a brief description of the subject matter of the hearing shall be included in the Notice of Hearing sent to all Parties, the Panel and the Attorney General's representative, as well as other information required by the Administrative Procedures Act.

- 8.4 The Hearing shall be held within the county in which the discriminatory practice is alleged to have occurred.
- 8.5 As provided in 6 Del.C. §4510, A subpoena shall be issued upon written request by any Party, Staff, or a Panel Member. Such requests shall be submitted no later than ~~ten (10)~~ twenty (20) days in advance of the Hearing. Witnesses and documents must be clearly described in writing. The consequence of failure to request a subpoena in a timely fashion shall be in the discretion of the Panel.
- 8.5.1 Any individual or entity served with a subpoena may apply to the Panel to quash or modify the subpoena on any legal basis including but not limited to the following: that the subpoena does not adequately describe the evidence requested; is not relevant to the complaint; covers an unreasonable period of time; requires disclosure of a trade secret, confidential research, development or commercial information, or privileged or other protected matter and no exception or waiver applies; subjects a person to undue burden or hardship; or requires disclosure of the opinion of an expert not retained for a hearing or information not describing specific events or occurrences in dispute.
- 8.5.2 Where a person fails or neglects to attend and testify or to produce records or other evidence in obedience to a subpoena or other lawful order, the Commission may petition the Superior Court for an order requiring the person to appear to produce evidence or give testimony. Failure to obey such order may be punishable by the Court as contempt.
- 8.6 Subpoenas may be served by ~~Staff, a Commissioner, or by another person who is not a Party and is not less than 18 years of age~~ any sheriff, deputy sheriff, constable or any member of the Commission or employee of the Division of Human Relations. The return of service of each subpoena shall be promptly filed at the appropriate Division office.
- 8.7 No fewer than ~~the majority of the three (3) Commissioners appointed to a Panel~~ shall constitute a quorum for all Commission Panel hearings. In the absence of any duly appointed Panel ~~Member, for any reason whatsoever,~~ the Chairperson or his or her designee shall be empowered to make a substitution, without notice to the ~~P~~parties, provided the Hearing has not yet begun.
- 8.8 A written list of witnesses a Party intends to call during a panel hearing must be delivered to the office of the Division of Human Relations where the complaint was filed and to all other Parties at least ten (10) days prior to a hearing.
- 8.8.1 The Panel, in its discretion, may refuse to receive into evidence any testimony of a witness who has not been named on the witness list.
- 8.9 All motions shall be delivered to the office of the Division of Human Relations where the complaint was filed and to all other Parties at least ten (10) days prior to the hearing. Motions filed beyond this time limit may not be considered at the discretion of the Panel. Opposing Parties may file a response to the motion or may present opposition at the hearing. Replies to responses to motions are not permitted.
- 8.10 ~~Hearings shall be recorded by electronic instrument or court reporter.~~
- 8.910 Copies or photographs of all exhibits, except exhibits intended solely for impeachment, must be delivered to the office of the Division of Human Relations where the complaint was filed and to all other parties at least ten (10) ~~business~~ days prior to the Hearing. The Panel shall consider such exhibits without formal proof unless the parties and the Commission have been notified at least five (5) ~~business~~ days prior to the Hearing that an adverse Party intends to raise an issue concerning the authenticity of the exhibit.
- 8.910.1 The Panel may refuse to receive into evidence any exhibit, a copy or photographs of which has not been delivered to the Commission and to an adverse Party as provided herein. After commencement of the hearing, the Panel, in its discretion, may view or inspect exhibits or the location involved in a case.
- 8.910.2 Exhibits submitted at Panel Hearings are to be kept by the Commission during the passage of time for judicial review under §4511 of the Delaware Equal Accommodations Law or until all relevant proceedings have been concluded, whichever is later. The exhibits shall then be returned to the Party which submitted such or, at the request of that Party, destroyed.
- 8.11 The hearing shall be conducted by the Panel Chair. Individuals [and business organizations] may be represented by counsel. ~~[A corporate entity must be represented by an attorney admitted to~~

~~practice law in Delaware~~ Individuals and business organizations may be represented by counsel. A business organization may also be represented by an non-attorney employee] .
Every hearing shall be recorded by electronic instrument or court reporter.

- 8.142 Certain Hearings may address purely legal issues, in which event all Parties or their counsel may, at the discretion of the Panel, have an opportunity to present oral argument.
- 8.123 In evidentiary hearings, all Parties or their counsel shall be given the opportunity to make a brief opening statement prior to the introduction of any evidence in the case. The Panel Chair shall explain to the Parties that they may make a general statement of what they intend to prove through testimony and exhibits but that they are not permitted at this time to testify or to present argument to the Panel. The Panel Chair shall interrupt a Party who attempts to testify or present argument during an opening statement and inform the Party that such testimony or argument can be provided at the appropriate time during the hearing. The Panel Chair will then offer the opposing Party the opportunity to present an opening statement if the opposing Party has not already done so or shall move to the next stage of the proceedings.
- 8.134 Testimony shall be under oath or affirmation administered by the ~~Panel Chair~~ court reporter. If a court reporter is not present, witnesses shall be sworn in by the Panel Chair.
- 8.145 Staff shall be required to attend the Hearing in order to assist in the proceedings, or, where appropriate, to be a witness.
- 8.156 The Panel Chair shall have full authority to control the hearing proceedings, including, but not limited to the authority to call and examine witnesses; to admit or exclude evidence; and to rule upon all motions and objections subject to the following:
- 8.156.1 Formal rules of evidence ~~need~~ will not be strictly followed.
- 8.156.2 Direct and cross examination shall be preserved and may be conducted by the Parties or their attorney(s), or Panel Members or the Deputy Attorney General representing the panel may question any witness.
- 8.156.3 Testimony from any person may be allowed at the discretion of the Panel.
- 8.156.4 Witnesses may be sequestered at the discretion of the Panel Chair upon the request of any Party(ies).
- 8.156.5 Evidence on the behalf of the Complainant(s) should ordinarily be introduced first, to be followed by the Respondent(s)' evidence, then allowing rebuttal, if any.
- 8.156.6 The Panel may continue a hearing from day to day or adjourn it to a later date or to a different place by so announcing at the Hearing or by appropriate notice to all Parties.
- 8.156.7 Following the presentation of the evidence, an opportunity shall be given to each Party to make a closing statement.
- 8.156.8 The Panel may recall the Parties for further testimony if necessary to reach a decision.
- 8.16.9 Deliberations of the Panel typically commence immediately following the hearing, and are not open to the public.
- 8.167 A written transcript shall be prepared, if and as required, on the written request of any Party, provided that such Party pays for the cost of preparing the transcript. Staff shall coordinate this process under State contract. A deposit may be required. Such recordings and transcripts shall be preserved with the official file record of a case.

9.0 Decision and Orders (~~Formerly Rules 25, 26, and 27~~)

- 9.1 The case decision may be rendered immediately following the Hearing or the Panel may reserve its decision to a later date. Case decisions shall be by a majority vote of the Panel.
- 9.2 A copy of the Panel's Final Order shall be mailed by certified mail, return receipt requested, delivered by hand or delivered by regular first class mail to the last address which each Party has provided to the Division of Human Relations for the Party or, if the Party is represented, the Party's attorney.
- 9.3 ~~Any party w~~ Within five (5) business days after receipt of the ~~Final~~ Panel's decision or order may apply to the Panel for reconsideration by briefly and distinctly stating the grounds. The application shall show

that it was served on the opposing party. Within five (5) ~~business~~ days after service of such application, the opposing party may serve and file a brief answer to each ground asserted. The Panel shall promptly convene to consider such application for reconsideration. The filing of such application shall extend the time for judicial review under 6 Del.C. §4511.

7 DE Reg. 793 (12/1/03)

10.0 Recovery of Attorney's Fees and Expenses (Formerly Rule 28)

- 10.1 Any Party seeking to recover attorneys' fees and expenses pursuant to Section 4508 (g) or (h) shall, at least five (5) ~~business~~ days prior to the hearing, file at the ~~office of the Division of Human Relations at the Division Office~~ where the complaint was filed, and serve upon the other Parties, a motion and affidavit detailing the time spent and fees incurred and a reasonable estimate of the fees likely to be incurred after such date through the end of the ~~H~~hearing. Any objections to the motion shall be presented at the Hearing. Determination that a Party is entitled to an award of attorneys' fees or costs shall be made solely at the Panel's discretion. Failure to timely file such motion and affidavit as set forth in these Regulations shall constitute a waiver of a Party's right to an award of attorneys' fees or costs.

11.0 Miscellaneous Provisions (~~Formerly Rules 29, 30, 31, 32, 33, and 34~~)

- 11.1 Time
- 11.1.1 In computing any period of time prescribed or allowed, by these Regulations or by order of court or by statute, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or Sunday, legal holiday, in which event the period shall run until the end of the next business day. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and other legal holidays shall be excluded in the computation. As used in this rule, "legal holidays" shall be those days provided by statute or appointed by the Governor or the Chief Justice of the Supreme Court of the State of Delaware.
- 11.1.2 When, by these Regulations or by a notice given thereunder or by order of court, an act is required, or allowed to be done, at or within a specified time, the Panel Chair or the Chairperson of the Commission, for good cause shown, may, at any time, in its discretion:
- 11.1.2.1 with or without motion or notice, order the period enlarged if the request therefore is made before the expiration of the period originally prescribed or as extended by a previous order; or
- 11.1.2.2 upon a motion made after the expiration of a specified period, permit the act to be done where the failure to act was the result of excusable neglect.
- 11.1.3 Whenever a Party has the right to do, or is required to do, some act or take some proceeding within a prescribed period after being served, and service is by mail, three (3) days shall be added to the prescribed period.
- 11.2 Service. Unless otherwise specifically required by the Equal Accommodations Law or these Regulations, service of complaints, answers, other pleadings, motions, requests or notices shall be made according to this Rule.
- 11.2.1 For the initial complaint and any pleading which brings in a new Party, service shall be made by certified mail, return receipt requested with the return receipt card signed by: the person to be served; a person living with or working in the office of the person to be served; or an agent authorized by appointment or by law to receive service of process. Alternatively, where appropriate, service may be made in accordance with Superior Court Civil Rule 4(f), or Superior Court Civil Rule 4(h) for service under Title 10, Section 3104.
- 11.2.2 For documents other than the initial complaint and any document which brings in a new Party, once jurisdiction over a party has been established, service shall be by certified mail, return receipt requested; by hand delivery or first class mail, as evidenced by a certificate of service; by an express mail service, with a receipt showing that the notice was delivered to the express mail

service; or by telecopier or facsimile machine with confirmation of the transmission from the sender's machine.

- 11.2.2.1 Where a Party is represented by an attorney, service shall be made on the attorney only.
- 11.3 The Administrative Procedures Act (29 **Del.C.** Ch. 101), as it may be amended from time to time, shall provide the method by which these Regulations may be amended.
- 11.4 These Regulations shall be reviewed periodically by the Commission, or a designee and the Director of the Division of Human Relations. Any recommendations for revision shall be submitted in writing to the Commission for consideration at a regularly scheduled meeting.
- 11.5 These Regulations shall be liberally construed in such a manner as to accomplish the purpose of the Equal Accommodations Law.
- 11.6 Copies of these Regulations shall be available during regular office hours at each of the offices of the Division of Human Relations or, upon request, by mail. A fee established by the Division of Human Relations may be charged for the provision of copies.

12 DE Reg. 505 (10/01/08) (Final)