

**DEPARTMENT OF STATE  
HUMAN RELATIONS COMMISSION  
Statutory Authority: 6 Delaware Code, Section 4616 (6 Del.C. §4616)**

**ORDER**

**FINAL**

**1502 Fair Housing Regulations**

A public hearing was held on June 10, 2004 to receive public comment on the proposed changes to the Fair Housing Regulations of the State Human Relations Commission. Notice of the hearing was published in two newspapers and in the Register of Regulations, Volume 7, Issue 11, May 1, 2004. The Commission deliberated and reached a decision at its regularly scheduled meeting on September 9, 2004.

**Summary Of The Evidence And Information Received**

There were no verbal comments offered at the public hearing. Three written comments were received from the State Council for Persons with Disabilities, Delaware Developmental Disabilities Council, and the Governor's Advisory Council for Exceptional Citizens. The letters are similar and are summarized as follows:

1. The use of the form for filing complaints should not be mandatory and the word "may" should replace "should."
2. The 90 day time frame for dismissal due to inactivity should be expanded. Formerly, it was one year.
3. The 10 calendar or business days for disclosing witnesses and exhibits for a hearing should be consistent.
4. The commentators suggest that the Commission should be able to order transcripts. The rules just authorize a party to request a transcript.
5. Several clerical errors were noted.

**Findings Of Fact Based On The Information Received**

1. The parties are encouraged to use the Commission's complaint form. Using the directory term "should" instead of "shall" allows for discretion in accepting another form of complaint.
2. The dismissal after 90 days of inactivity rather than one year is based on HUD guidelines for investigation from the U.S. Department of Housing & Urban Development. A complainant can refile within the applicable statute of limitations.
3. The Commission agrees that the 10 day period for identifying witnesses and other evidence for a hearing should be consistent. The rules will be uniform allowing 10 business days in 10.1 and 10.2..
4. The Commission can ask for a transcript since it is part of its own records. It is unnecessary to make a provision in the Rule.
5. The clerical changes are made as suggested. The affected provisions are restated in the TEXT below.
6. The Commission find these changes are not substantive and do not require further publication and comment.

**Text**

The text appears in the Register of Regulations, Volume 7, Issue 11, May 1, 2004 with the following substitutions:

- 2.4 Complaints filed with the Commission through the Division of Human Relations shall be in writing and are deemed to be filed when received at the office in substantially completed form as required. A complaint referred to the Commission or the Division of Human relations by a federal agency shall be deemed to be filed on the date it was taken or filed with such agency.
- 4.2 Within thirty (30) days after a complaint is filed, the Division shall prepare questionnaires to be answered by the parties. Questions may be suggested by the parties for inclusion in such questionnaires. The answer to such questionnaires shall be submitted in writing to staff within 10 business days after service of the questionnaire. Each party shall receive a copy of every other party's response to questionnaires.

- 4.4 Investigation of a complaint shall proceed according to the time limits set forth in the Act to aid conciliation, to determine if reasonable cause exists to issue a charge, and to prepare the case for hearing or Court.
- 5.6 Written and executed copies of such agreements shall be given to all parties. Conciliation agreements shall be publicly available unless the Complainant and Respondent otherwise agree and the Commission determines that disclosure is not required to further the purposes of the Act.
- 10.2 A written list of witnesses a party intends to call during a Panel Hearing must be delivered to the Commission and all parties at least ten (10) business days prior to the hearing.
- 15.2.1.2 Units occupied by persons under age 55 who are employees of the housing facility are not considered in determining whether housing qualifies as housing for persons age 55 or older.

#### **Decision And Effective Date**

The State Human Relations Commission hereby adopts the proposed changes to be effective 10 days following publication in the Register of Regulations.

**SO ORDERED THIS** 9<sup>th</sup> day of September, 2004.

#### **STATE HUMAN RELATIONS COMMISSION**

Calvin H. Christopher, Chairperson

Gail E. Launay, Vice Chairperson

Randall Perry

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Dawn Brown

Chok-Fun C. Chui

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Doug James

William D. Johnston

Harold Truxon

Mookkan Periyasamy

John W. Pitts

### **1502 Fair Housing Regulations**

#### **Introduction**

Pursuant to the authority granted to the Human Relations Commission under Title 6, Chapter 46, Section 4616 of the Delaware Fair Housing Act, and in accordance with the applicable requirements of The Administrative Procedures Act, the Human Relations Commission has adopted these rules and regulations to carry out the Delaware Fair Housing Act (The Act).

These regulations shall govern individual cases over which the Human Relations Commission and the ~~Office~~ Division of Human Relations have jurisdiction pursuant to Chapter 46, Title 6 of the Delaware Code.

These procedural regulations are intended to carry out the Delaware Fair Housing Act prohibiting unlawful discrimination in housing, and to enable the Commission to achieve equal or greater protection, thereby allowing eligibility for certain Federal funding necessary to carry out this function as a substantially equivalent agency.

~~These new Regulations shall apply to Fair Housing causes of action occurring under the Delaware Fair Housing Act on or after September 1, 1992.~~

These rules and regulations are specific to the processing of complaints of unlawful housing discrimination under the Delaware Fair Housing Act. The Commission believes these rules and regulations are necessary to ensure the appropriate administration of the Fair Housing Act and in order that the commission will be regarded as a substantially equivalent agency.

#### **1.0 Definitions**

1.1 The following terms used in these regulations shall have the same definition as defined in the Delaware Fair

Housing Act, Section 4602:

Age  
Aggrieved persons  
Chairperson  
Commission  
Complainant  
Conciliation  
Conciliation Agreement  
Court  
Covered Multifamily Dwellings  
Discriminatory Housing Practice  
Dwelling  
Familial Status  
Family  
Handicap or Disability  
Housing For Older Persons  
Marital Status  
Panel  
Panel Chair  
Person  
Residential Real Estate - Related Transaction  
Respondent  
To Rent  
To Sell or sale  
Special Administration Fund

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

**“Act”** means The Delaware Fair Housing Act as amended from time to time, Chapter 46, Title 6 of the Delaware Code.

**“Commissioner”** means a person duly serving as a member of the Commission.

**“Charging Party”** means the same as "Complainant" (including in some instances the Commission).

**“Creed”** means any system of beliefs guiding or directing a person's behavior and actions including, but not limited to, an organized religion, sect, or philosophical society.

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

**“National Origin”** means the native country of an individual or his ancestor(s).

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

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

**“Religion”** means a particular system of faith and worship recognized and practiced by a particular church, sect or denomination or other group of people.

**“Sex”** means the basis of being male or female.

~~**“Staff”** means a person employed by the Office of Human Relations of the State of Delaware.~~

**“Verified”** means that the person signing the complaint or answer has sworn or affirmed that the statements of facts in the document are true.

## **2.0 Commencement of Proceedings Filing a Complaint (Formerly Rules 1, 2, 3, 4, 5 and 6)**

2.1 Any aggrieved person or the Commission itself may file a written complaint. Minors may be represented by a parent or guardian or responsible adult for the purpose of bringing an action.

2.2 The Commission may initiate an investigation regarding compliance with applicable law whether or not a complaint is filed. Such investigations may be initiated by written statement showing justification signed by the Commission Chair or such person as may be authorized by the Commission in accordance with applicable provisions of law. To the extent practicable, procedures in these Regulations shall apply to Commission-initiated investigations.

2.3 A complaint shall be filed at any one of the places of business of the ~~Office~~ Division of Human Relations.

2.4 Complaints ~~made~~ filed with the Commission through ~~its Offices~~ The Division of Human Relations shall be in writing and are deemed to be filed when received at the office in substantially completed form as required. A complaint referred to the Commission or ~~Office~~ the Division of Human Relations by a federal agency shall be deemed to be filed on the date it was taken or filed with such agency.

2.5 Form of Complaint

2.5.1 All complaints ~~may~~ should be filed on a Complaint Form provided by the Office.

2.5.2 All complaints shall include the following data:

2.5.2.1 Full name and address of Complainant(s).

2.5.2.2 Full name and address of Respondent (s), if known, identifying whether each Respondent is an individual, partnership, corporation, etc.

2.5.2.3 The alleged discriminatory housing practice(s). --A concise statement of the facts thereof.

2.5.2.4 The date (s) of the alleged discriminatory practice (s) and whether the practice(s) is/are of a continuing nature together with the duration of such continuing practice(s).

2.5.2.5 The signature of Complainant or his/her attorney ~~at law, or his/her representative authorized by written certification,~~ or, in the case of a minor, a parent ~~or guardian,~~ guardian, or responsible adult ~~on behalf of such minor, unless otherwise required by law.~~ Such signature shall be notarized as a verified complaint. The ~~Office~~ Division of Human Relations shall provide such notarial service without charge for persons coming into the office.

2.6 Complainants and Respondents must keep the ~~Office~~ Division of Human Relations informed of their current addresses and telephone numbers.

### **3.0 Answer to Complaint of Respondent Role (Formerly Rule 7)**

A copy of ~~Any~~ written answer of Respondent shall be verified and filed with the Commission within 20 days of receiving the complaint with proof of service showing a copy has been served on the Complainant.

### **4.0 Initiating Action on Investigation of the Complaint (Formerly Rules 8, 9, 10 and 11)**

4.1 Investigation of complaints shall be conducted by ~~Staff~~ the Division and commenced within 30 days after filing the complaint, and may include: interviews, questionnaires, fact finding conferences, search of records, ~~the conduct of~~ tests, identification of witnesses, development of statistics, other studies of alleged practices and patterns, or other work to gather relevant evidence. ~~Such work shall be subject to the approval of the Director.~~

4.2 Within thirty (30) days after a complaint is filed, ~~[staff the Division]~~ shall prepare questionnaires to be answered by the parties. Questions may be suggested by the parties for inclusion in such questionnaires. The answer to such questionnaires shall be submitted in writing to staff within 10 business days after service of the questionnaire. Each party shall receive a copy of every other party's response to questionnaires.

4.3 ~~Staff shall~~ The Division may schedule an informal fact-finding conference to be held with the Complainant and Respondent within thirty (30) days of the date the complaint is filed, unless it is impractical to do so.

4.4 Investigation of a complaint shall proceed ~~with all possible dispatch~~ according to the time limits set forth in the Act, to aid conciliation, to determine if reasonable cause exists to issue a charge and to prepare the case for hearing or Court.

4.5 At the end of each investigation, the ~~Commission~~ Division shall prepare a final investigative report containing that information set forth in Section 4610 (b)(5) of The Act.

### **5.0 Conciliation and Agreement (Formerly Rules 12, 13, 14 and 15)**

5.1 The opportunity to conciliate or settle a case is available at any stage of the complaint process and may include a no-fault settlement opportunity prior to the onset of the investigation offer; the Complainant shall be advised of the opportunity ~~so notified~~ when a complaint is filed and the Respondent when a complaint is served.

5.2 Conciliation shall be initiated upon request of Complainant or Respondent or recommendation of the Division ~~Staff~~ or the Panel assigned to the case. Statements made in the course of conciliation can be disclosed only as provided under the Act.

5.3 An employee of the Division may serve as conciliator. A Commissioner, who is not assigned to the hearing Panel ~~other than one of the Commissioners later appointed as members of the hearing panel,~~ may, in the discretion of the Chairperson be appointed by the Chairperson to serve as conciliator. ~~;~~ or a staff person may serve as conciliator.

5.4 Any agreement achieved by conciliation shall be set forth in writing and shall specify the appropriate relief agreed upon by the parties. The following may be included:

5.4.1 binding arbitration to resolve the dispute; payment of damages;

5.4.2 compensation or other monetary relief;

5.4.3 payments made to the Special Administration Fund of the Human Relations Commission under Chapter 30, Title 31 of the Delaware Code;

5.4.4 monitoring of future activities;

5.4.5 affirmative action measures; ~~and/or other means to ensure future compliance, such as the implementation of Rental Guidelines in housing cases;~~

5.4.6 closing or terminating the case; and

5.4.7 any other relief agreed upon by the parties that will further the purposes of the Act.

5.5 A conciliation agreement shall become effective when signed by all parties, ~~the Panel Chair if a Panel has been appointed,~~ and the Commission Chair or his or her designee.

5.6 Written and executed copies of such agreements shall be given to all parties. ~~and notice thereof promptly sent to the Panel if a Panel has been appointed.~~ Conciliation agreements shall be ~~made public~~ publicly available unless the Complainant and Respondent otherwise agree and the Commission determines that disclosure is not required to further the purposes of the Act.

5.7 ~~Failure to comply with~~ Conciliation Agreements shall be ~~pursued~~ enforced according to the Act.

## **6.0 Charge (Formerly Rules 16 and 17)**

6.1 ~~Except in the case of complaints initiated by the Commission, the Director of the Office of Human Relations or a staff person designated by the Director shall make a determination as to whether or not reasonable cause exists to believe that a discriminatory choosing practice has occurred or is about to occur and issue a charge or dismiss the complaint pursuant to Section 4610(f).~~

6.2 ~~Although the time for conciliation specified by Section 4610(b)(1) of the Act ends with the filing of a charge or dismissal, under Section 4612(e), staff may still make efforts to settle the case before a final order is issued.~~

## **7.0 Case Closing Prior to Hearing 6.0 Administrative Closure (Formerly Rules 18, 19, and 20)**

7.1 ~~6.1~~ A case ~~shall be considered to have been closed or~~ can be voluntarily terminated upon withdrawal of complaint by Complainant in writing with or without prejudice prior to answer ~~prior to a response~~ by the Respondent. ~~Such withdrawal shall be in writing. However, after answer a response is filed by Respondent, a complaint may be withdrawn with or without prejudice only with the consent of the Respondent or with approval by the Chairperson or his or her designee to preserve the public interest.~~

7.2 ~~6.2~~ A case may be closed by the Division for lack of activity in the case for more than ~~one (1) year~~ ninety (90) days, failure of Complainant to cooperate, or loss of contact with the Complainant. Application shall be made in writing ~~by Staff to Panel or if no Panel has been appointed then~~ to the Director or Chairperson, stating the reason for the proposed closing.

7.3 ~~A case may be closed for failure of Complainant to cooperate upon application of Staff to the Panel or if no Panel has been appointed, then to the Director or Chairperson.~~

7.4 ~~A case may be closed for loss of contact with the Complainants where all reasonable efforts to locate same have been exhausted, upon written application by the Panel or by the Staff to the Panel, or if no Panel has been appointed, then to the Director or Chairperson.~~

7.5 ~~6.3~~ All notices of case closing shall be served on all parties at the last addresses they provided to the Division and shall include a statement of the option to re-file the complaint as provided under the Act within the applicable statute of limitations. ~~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 Director or Chairperson.~~

## **7.0 Charge and Answer**

7.1 Except in the case of complaints initiated by the Commission, the Director or his or her designee shall make a determination as to whether or not reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur and issue a charge on behalf of the aggrieved person or dismiss the complaint pursuant to Section 4610(f).

7.2 The time for conciliation specified by Section 4610(b)(1) of the Act ends with the filing of a charge or a dismissal under Section 4610(f)(1)(2). Any subsequent settlement negotiations are conducted between the Respondent, or his or her attorney, and the Deputy Attorney general assigned to represent the Division.

7.3 The charge shall consist of a short and plain statement of the facts that support a finding of reasonable cause by the Division and shall be served on the Respondent and the aggrieved person. The charge shall be based on the final investigative report and need not be limited to the facts alleged in the complaint.

7.4 An aggrieved person may intervene as a party in the proceeding with written notice to the Division and the Respondent.

7.5 Within 20 days after service of the charge, a Respondent shall file an answer with the Division.

7.6 Failure to file an answer to the charge shall be deemed an admission by the Respondent of all matters of fact recited therein and may result in the entry of a default decision by the Commission.

7.7 Any party may elect in writing to proceed for judicial determination rather than the administrative hearing before the Commission by notifying the Division within 20 days of receiving the charge. If an election for judicial determination is made, the Respondent is not required to file an answer to the charge with the Division. The

subsequent proceeding are subject to the rules of the Court.

### **8.0 Appointment of Panel (Formerly Rule 21 and 22)**

8.1 In the absence of an election to proceed with judicial determination ~~in a Civil Action~~ pursuant to Section 4612 of the Act, the Commission Chair or designee shall promptly appoint a panel of three (3) Commissioners, one of whom shall be designated as the Panel Chair.

8.2 The Panel shall have all the powers of the Commission with respect to matters before it.

### **9.0 Expedited Discovery after a Charge is Filed (Formerly Rules 23, 24, 25, 26 and 27)**

9.1 ~~Staff shall cause interrogatories and/or requests for production of documents to be issued and depositions to be taken upon request of any party;~~ After a charge is filed by the Division, parties may obtain discovery by depositions, written interrogatories, production of documents or things, and requests for admission. The expense of such discovery shall be borne by the party requesting the discovery.

9.2 Pursuant to the Fair Housing Act, Sections 4612(d) and (e), discovery in ~~A~~ administrative proceedings shall be conducted as expeditiously as possible consistent with the need of all parties to obtain relevant evidence and the statutory requirement that a hearing be scheduled within 120 days following the issuance of the charge unless impracticable.

9.3 The parties shall try to agree on procedures for discovery. Where the parties cannot agree, disputes shall be presented in writing ~~to staff~~, and the dispute shall be resolved by written decision of a Commissioner, appointed by the Chairperson, who will not be assigned to the hearing Panel, ~~or to the Director, who shall resolve the dispute according to the intent of the Fair Housing Act and fairness to both parties.~~ The person making the decision shall ~~make a written record of the decision and the reasons therefor.~~

9.4 Discovery need not be formal, ~~made with the customary formalities of Superior Court or the Court of Chancery.~~ For example, the parties need not have a professional stenographer for transcription of depositions, so long as a record is made in some fashion such as an audio or video tape. ~~by a professional or non-professional.~~ Each party ~~Parties~~ shall be entitled to a copy of the record, in whatever form, at their own expense.

9.5 ~~Any party may serve on any other party a request to produce and permit the party making the request, or someone acting on that party's behalf to inspect and copy or photograph, any designated documents or photographs which constitute or contain evidence relating to any matter which is relevant to the subject matter involved in the pending hearing and not otherwise privileged and which are in the possession, custody or control of the party upon whom the request is served. Nevertheless, requests for production shall not be unduly burdensome upon the parties.~~

9.6 ~~Production of documents shall be made to the requesting party within twenty (20) days after a written request is served upon the party, with a copy filed with the Commission. If the parties cannot agree as to production of documents, the party submitting the request may request the Commission to resolve the dispute according to Rule 9.1 (Formerly Rule 23).~~

9.7 ~~Each party shall be provided with copies of the other parties responses to staff questionnaires. If an interrogatory was not covered by the staff questionnaire, any party may request staff to supplement the questionnaire with additional questions. Disputes as to this shall be resolved according to section 9.1 (Formerly Rule 23).~~

### **10.0 Pre-hearing Production (Formerly Rules 28 & 29)**

10.1 Copies or photographs of all exhibits, except exhibits intended solely for impeachment, must be delivered to the Commission ~~Office~~ at the office of the Division where the complaint was filed and to all parties at least ten (10) business days prior to the hearing. The hearing 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.

10.1.1 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 locus location involved in a case. ~~in the presence of the parties and/or their attorneys or outside the presence of the parties or their attorneys.~~

10.1.2 Exhibits submitted at Panel Hearings are to be kept by the Commission during the passage of time for judicial review under Section 4612(i) or until all relevant proceedings have been concluded, whichever is later. When such time has passed, the exhibits shall be returned to their proper owner or destroyed.

10.2 A written list of witnesses a party intends to call during a Panel Hearing must be delivered to the Commission and all parties at least ten (10) [business] twenty-one (21) days prior to the hearing.

10.2.1 The Commission Panel may refuse to receive into evidence any testimony of a witness ~~which~~ who has not been named on the witness list.

10.2.2 A party requesting that a witness be subpoenaed to appear shall provide the address where service can be made as required under Rule 11.5. A witness is required to appear only if a subpoena has been issued.

## **11.0 Hearings (~~Formerly Rules 30, 31, 32, 33, 34 & 35~~)**

11.1 The purpose of a hearing is to receive evidence, determine facts, and, after deliberation, render an adjudication in accordance with applicable law.

11.2 ~~The date, time, place and subject matter to be heard shall be included in the notice of hearing sent to all parties, the Panel and the Attorney General's representative, as well as such other information as is required by the Administrative Procedures Act. Notice of the hearing shall be sent to the parties pursuant to the Administrative Procedures Act.~~

11.3 No fewer than three Commissioners shall constitute a quorum for all Commission Panel hearings. In the absence of any duly appointed Panel member ~~for any reason whatsoever~~, the Commission Chair or his or her designee shall be empowered to make a substitution without notice to the parties, provided the hearing has not yet begun.

11.4 The hearing shall be held in the C county in which the discriminatory housing practice is alleged to have occurred or is to be about to occur.

11.5 A subpoena shall be issued upon written request by any party to a proceeding, ~~the Staff~~, or the Panel. Such request shall be submitted by a party within a reasonable time in advance of the hearing or deposition. Witnesses and documents requested must be clearly described in writing and include addresses for service. The consequence of failure to request a subpoena in timely fashion shall be at the discretion of the Panel.

11.5.1 Subpoenas may be served by the Division or a person ~~Staff, a Commissioner, or by any other person who is not a party and is not less than 18 years of age or older who is not a Respondent or aggrieved person in the proceeding~~. A return of service of each subpoena shall be promptly filed at the appropriate Office.

11.5.2 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 is punishable by the Court as contempt.

11.6 The hearing shall be conducted by the ~~Commission~~ Panel Chair in a setting designed to put the parties at ease. ~~The parties~~ Individuals may be represented by counsel. A corporate entity must be represented by an attorney admitted to practice in Delaware. Every hearing shall be recorded by electronic instrument or court reporter.

11.6.1 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 purpose of opening statements shall be to clarify the positions of the parties and the issues being presented for determination. ~~Testimony shall be under oath or affirmation administered by the Panel Chair or a notary public.~~

11.6.2 ~~All information and facts available~~ evidence shall be presented in by sworn testimony and exhibits ~~documentary evidence presented at the hearing. Staff shall be required to attend the hearing in order to assist in the proceedings, or, where appropriate, to be a witness.~~ The Panel Chair shall have full authority to control the procedure of a hearing, including, but not limited to the authority to call and examine witnesses, admit or exclude evidence, and rule upon all motions and objections subject to the following:

11.6.2.1 Formal rules of evidence need not be strictly followed.

11.6.2.2 ~~The right of cross-examination shall be preserved and may be conducted by the parties, or a duly authorized party who represents himself or herself, an attorney admitted to practice in Delaware who represents a party, attorney-at-law or the Commission Panel.~~

~~11.6.2.3 Testimony from any other person may be allowed at the discretion of the Commission Panel.~~

11.6.2.3 Witnesses may be sequestered at the discretion of the Commission Panel, ~~upon the request of the party(s).~~

11.6.2.4 Evidence on behalf of the Complainant should ordinarily be introduced first, to be followed by the Respondent, then allowing rebuttal, if any.

11.6.2.5 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.

11.6.2.6 Following presentation of the evidence an opportunity shall be given to each party to make a closing statement.

11.6.2.7 The Panel may re-call the parties for further testimony if it is unable to reach a decision.

11.7 A written transcript shall be prepared, if and as required, on the written request of any party to the matter, provided that such party pays for the cost of preparing the transcript. ~~Staff~~ The Division shall coordinate this process under State contract. ~~Such recordings and transcripts shall be preserved with the official file record of a case.~~

## **12.0 Decision and Orders (Formerly Rules 36, 37 & 38)**

12.1 Deliberations of the Panel are non-public. The case decision may be rendered immediately following the Hearing or the Panel may reserve its decision to a later date and so advise the parties. Decisions shall be by majority vote of the Panel. ~~The Attorney General's representative may be invited to be present while the Panel reaches a decision.~~

12.2 A copy of the Final Order shall be delivered by hand or mailed by Certified Mail, Return Receipt Requested, or ~~Hand Delivery~~ or by regular first class mail to the parties' last known address. In addition each party shall be notified of the right to seek reconsideration by the Panel.

12.3 Any party within ten (10) five (5)-business days after mailing of the Final order may apply to the Panel for reconsideration briefly and distinctly stating the grounds therefor. Such application for reconsider must show service on the opposing party.

Within ten (10) five (5) business days after service of such motion, the opposing party may serve and file a brief answer to each ground asserted in the motion. ~~Any such application or answer should be submitted in five (5) copies.~~ The Panel shall promptly convene ~~in person or by teleconference~~ to consider such motion for reconsideration. The filing of such application shall ~~not~~ extend the time for judicial review under Section 4612(i).

## **13.0 Recovery of Attorney's Fees, Costs, and Expenses**

13.1 Any party seeking to recover attorney's fees, costs, and expenses shall file a motion and affidavit detailing the time spent and fees incurred no later than the close of any hearing held before the Panel.

13.2 A motion filed by a Respondent shall state with particularity the improper purpose that would permit recovery of attorney's fees, costs, and expenses as provided pursuant to 6 Del. C. Section 4615.

## **~~13.0~~ 14.0 Miscellaneous Provision (Formerly Rules 39, 40, 41, 42, 43 & 44)**

~~13.1~~ 14.1 Time.

~~14.1.1~~ 14.1.1 In computing any period of time prescribed or allowed by these Rules, 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, or other legal holiday, or other day on which the ~~office~~ Division of Human Relations is closed, in which event the period shall run until the end of the next day on which the ~~Office~~ Division is open. 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 State of Delaware.

~~14.1.2~~ 14.1.2 When by these rules 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 Commission ~~or Director~~ for cause shown may at any time in its discretion

~~14.1.2.1~~ 14.1.2.1 with or without motion or notice order the period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order or

~~14.1.2.2~~ 14.1.2.2 upon motion made after the expiration of specified period permit the act to be done where the failure to act was the result of excusable neglect.

~~14.1.3~~ 14.1.3 Whenever a party has the right to or is required to do some act or take some proceeding within a prescribed period after being served and service is by mail, 3 days shall be added to the prescribed period.

~~14.2~~ 14.2 Service. Unless otherwise specifically required by the Acts or these regulations, service of complaints, answers, other pleadings, charges, motions, requests or notices shall be made according to this rule.

~~14.2.1~~ 14.2.1 For the initial complaint and any pleading which brings in a new party, service shall be sufficient if made according to Superior Court Civil Rule 4(f), Rule 4(h) for service under Title 10, Section 3104, or by certified mail, return receipt requested with the return receipt card signed by (1) the person to be served, (2) a person living with or working in the office of the person to be served, or (3) an agent authorized by appointment or by law to receive service of process.

~~14.2.2~~ 14.2.2 Once jurisdiction over a party has been established, service may be by certified mail, return receipt requested, or by hand delivery or mail pursuant to Superior Court Civil Rule 5(b), as then in effect, or by some other means of notice generally recognized in the community with some confirmation of the notice having been sent such as by regular first class mail to the parties' last known address as evidenced by a certificate of mailing, by an express mail service with a receipt showing the notice was delivered to the express mail company, or by telecopier or fax with confirmation of transmission from the sender's machine.

~~14.3~~ 14.3 These regulations shall be liberally construed to accomplish the purpose of the applicable laws.

14.413-4 These regulations shall be reviewed periodically by the Commission or its designee and the Director of the Office Division of Human Relations. Any recommendations for change shall be submitted in writing to the Commission for consideration at a regularly scheduled meeting.

14.513-5 The Administrative Procedures Act (Chapter 101 of Title 29) shall provide the method by which these regulations may be amended.

14.613-6 Copies of these regulations shall be available during regular office hours at the office Division of Human Relations or, upon request, by mail. ~~A fee established by appropriate authority may be charged.~~ A copy of the rules and regulations is also available at : <http://www.state.de.us/research/AdminCode/General/Frame.htm>

## **15.0 Regulations related to Housing for Older Persons.**

### 15.1 Housing for persons age 62 or older.

15.1.1 Housing that is designated for persons age 62 or older must be solely occupied by persons age 62 or older.

15.1.2 No person under age 62 may move into a unit designated for persons age 62 or older even if it is also occupied by a person who is qualified by age. For example, if a person age 65 who lives in a unit designated for persons age 62 or older marries a person age 60, the person age 60 does not qualify to live in the unit.

15.1.3 Units occupied by persons under age 62 who are employees of the housing facility are not considered in determining whether housing qualifies as housing for persons age 62 or older.

15.1.4 Units occupied by persons under age 62 who are necessary to provide a reasonable accommodation to residents with disabilities are not considered in determining whether housing qualifies as housing for persons age 62 or older.

### 15.2 Housing for persons age 55 or older.

15.2.1 Housing qualifies under this section as long as at least 80% of the units are occupied by at least one person age 55 or older.

15.2.1.1 In computing whether the 80% occupancy test is met, unoccupied units are not included in the calculation.

15.2.1.2 Units occupied by persons under age 55 who are employees of the housing facility are not considered in determining whether housing qualifies as housing for persons age 55 or older.

15.2.1.3 Units occupied by persons under age 55 who are necessary to provide a reasonable accommodation to residents with disabilities are not considered in determining whether housing qualifies as housing for persons age 55 or older.

15.2.1.4 A unit that is temporarily vacant is deemed to be occupied by a person 55 or older if, within the preceding 12 months, the unit was occupied by a person 55 or older who intends to periodically return.

15.2.1.5 Owners or managers must maintain records demonstrating that at least 80% of the units are occupied by at least one person age 55 or older. These records shall include biennial surveys made to confirm the ages of occupants by reliable documentation, such as drivers' licenses, passports, etc. Surveys shall be made available to the Division for inspection if a complaint of discrimination is filed.

15.2.2 To qualify under this section, a facility or community must publish and adhere to policies and procedures that demonstrate the intent of the owner to maintain housing for persons age 55 or older. The publication must be available for inspection at the management office during regular business hours.

15.2.3 To qualify under this section, a facility or community must have significant facilities and services designed to meet the physical or social needs of older persons. These can include periodic seminars, clubs, social activities, field trips, transportation, a local bus stop, homemaker or health services, maintenance, clubhouse, exercise equipment, recreation area, newsletters, etc. The Division will maintain a list of suggestions available for the convenience of providers of housing for persons 55 or older. The list is not all-inclusive.

15.3 Provisions under the Act regarding familial status and age are not applicable to qualified housing for older persons.

15.4 A child under 18 years of age may be a temporary resident in a unit of housing for older persons if the child's parent, guardian, or person acting as a parent, with whom the child just resided, is unable to care for the child by reason of death, serious injury or serious illness.