

**RULES OF PRACTICE
OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS**

Title 48, Rules of the City of New York, Subchapter C

Additional Rules for Human Rights Cases

Subchapter C - Additional Rules for Human Rights Cases

§ 2-21 Applicability.

This subchapter shall apply solely to cases brought by the New York City Commission on Human Rights pursuant to the City Human Rights Law, title 8 of the New York City Administrative Code. Chapter 1 of this title shall also apply to such proceedings except to the extent that it is inconsistent with this subchapter.

§ 2-22 Definitions.

For purposes of this subchapter:

Commission. “Commission” shall mean the New York City Commission on Human Rights.

Complainant. “Complainant” shall be defined according to the Commission’s rules, 47 RCNY § 1-03.

Party. “Party” shall be defined according to the Commission’s rules, 47 RCNY § 1-03.

Petition. The complaint as defined in the Commission’s rules, 47 RCNY §§ 1-11, 1-12 shall constitute the petition as defined in §1-01 of Chapter 1 of this title.

Petitioner. “Petitioner” shall mean the Law Enforcement Bureau of the Commission.

Report and recommendation. The report and recommendation referred to in this title shall constitute the recommended decision and order referred to in the Commission’s rules.

§ 2-23 Proceedings Before Referral to OATH.

Proceedings before the case is docketed at OATH shall be governed by the Commission’s rules (47 RCNY §§ 1-01 to 1-62).

§ 2-24 Docketing the Case at OATH.

(a) Notwithstanding the provisions of § 1-26 of this title, only the petitioner may docket a case at OATH. The petitioner shall docket a case by delivering to OATH a completed intake sheet, the notice of referral required by the Commission’s rules (47 RCNY § 1-7 1), the pleadings and

any amendments to the pleadings, any notices of appearances filed with the petitioner pursuant to the Commission's rules (47 RCNY § 1-15), and any changes of address filed with the petitioner pursuant to the Commission's rules (47 RCNY § 1-16).

(b) Upon docketing the case at OATH, the petitioner shall serve notice of trial, if a trial date has been selected, and notice of conference, if a conference date has been selected, in compliance with § 1-28 of this title.

§ 2-25 Intervention.

(a) A person may move to intervene as a party at any time before commencement of the hearing. Intervention may be permitted, in the discretion of the administrative law judge, if the proposed intervenor demonstrates a substantial interest in the outcome of the case. In determining applications for intervention, the administrative law judge shall consider the timeliness of the application, whether the issues in the case would be unduly broadened by grant of the application, the nature and extent of the interest of the proposed intervenor and the prejudice that would be suffered by the intervenor if the application is denied, and such other factors as may be relevant. The administrative law judge may grant the application upon such terms and conditions as he or she may deem appropriate and may limit the scope of an intervenor's participation in the adjudication.

(b) A complainant shall be permitted to intervene as of right, upon notice to all parties and the administrative law judge at or before the first conference in the case, or, if no conference is held, before commencement of trial. The Commission's Law Enforcement Bureau shall prosecute the complaint. Complainants and respondents may be represented by counsel or other duly authorized representatives, who shall file notices of appearance pursuant to the Commission's rules (47 RCNY § 1-15), if before referral of the case to OATH, or pursuant to § 1-11 of this title, if after such referral.

§ 2-26 Withdrawal or Dismissal of the Petition.

After referral of a case to OATH, but before commencement of the hearing, dismissal of the case by the petitioner on the grounds provided in the Commission's rules (47 RCNY § 1-22), or withdrawal of the case by the petitioner pursuant to § I -32(f) of this title, shall be effected by notice to all other parties and to the administrative law judge. The complainant may move to withdraw the complaint at any time before commencement of the hearing. All other motions to withdraw or dismiss the petition shall be governed by §§ 1-34 and 1-50 of this title.

§ 2-27 Entry of and Relief from Default.

(a) If the notice of referral to OATH alleges that a respondent has not complied with the requirements of § 1-14 of the Commission's rules (47 RCNY § 1-14), the respondent shall serve and file an affidavit asserting that the respondent has complied with those requirements, or asserting reasons constituting good cause for its failure to comply with those requirements. Such affidavit shall be served and filed at or before the first conference in the case, or, if no conference is held, before commencement of the hearing. If the respondent fails to serve and file such an affidavit within the time allowed by this paragraph, the administrative law judge shall declare the respondent to be in default and shall preclude the respondent from further participation in the adjudication. If the respondent timely serves and files such an affidavit, the administrative law judge shall decide the questions presented, and shall either declare the respondent to be in default and preclude the respondent from further participation in the adjudication, or shall deny the default in full or upon stated terms and conditions which may include such limitations on the respondent's participation in the adjudication as the administrative law judge deems to be equitable.

(b) A respondent against whom a default has been entered pursuant to paragraph (a) of this section may move at any time before issuance of the report and recommendation to open the default. Such a motion must include a showing of good cause for the conduct constituting the default, a showing of good cause for the failure to oppose entry of the default in accordance with paragraph (a) of this section, and a meritorious defense to the petition, in whole or in part. In granting any such motion, the administrative law judge may impose such terms and conditions as he or she deems to be equitable.

§ 2-28 Settlement Conferences.

In addition to or instead of the conduct of settlement conferences pursuant to §§ 1-30 and 1-31 of this title, the administrative law judge may in his or her discretion, on the request of any party, refer the case for a settlement conference to be conducted by the Commission's Office of Mediation and Conflict Resolution pursuant to the Commission's rules (47 RCNY subchapter F). In the discretion of the administrative law judge, proceedings at OATH may be stayed, in whole or in part, pending completion of such settlement conference or for any shorter period of time.

§ 2-29 Discovery.

(a) *Policy.* Although strict compliance with the provisions of article 31 of the Civil Practice Law and Rules shall not be required, the principles of that article may be applied to ensure orderly and expeditious preparation of cases for trial.

(b) *Scope of discovery.*

(1) With the exception of the substance of any oral or written communications made by and between a complainant or complainant's counsel and the petitioner subsequent to a determination that probable cause exists, the materials contained in the petitioner's investigatory file shall be available as of right to any party for inspection and copying subsequent to docketing at OATH upon reasonable notice, unless a default has been entered against that party by the administrative law judge.

(2) In the absence of an agreement by the parties, the number of interrogatories, including subparts, shall be limited to fifteen. The administrative law judge may permit additional interrogatories upon application for good cause shown.

(3) Any party may take the deposition of any other party as of right. Other depositions shall be taken only upon leave of the administrative law judge for good cause shown. No person shall be deposed by the party conducting the examination for a period aggregating more than seven hours except upon consent of all parties or leave of the administrative law judge for good cause shown. Deposition testimony may be recorded by a stenographer or by videotape or audiotape recording, at the option of the party conducting the deposition. The cost of the recording and transcription of deposition testimony shall be borne by the party conducting the deposition.

(c) *Sanctions.* Failure to comply with or object to a discovery request in a timely fashion as provided by § 1-33 of this title may result in the imposition of sanctions as appropriate, including those specified in § 1-33(e) of this title.

§ 2-30 Interlocutory Review.

(a) Within five days after issuance of any interlocutory order or decision, a party may move for certification by the administrative law judge that such order or decision may be submitted, in whole or in specified part, for review by the chair of the Commission. If the party moving for certification seeks a stay of proceedings, in whole or in part, pending completion of the interlocutory review, the motion for certification shall include a statement as to why the failure to grant the requested stay would materially prejudice the party. Certification may also be made, and a stay may be ordered, by the administrative law judge on his or her own motion.

(b) As provided by the Commission's rules (47 RCNY § 1-74), failure of a party to seek interlocutory review of a decision or order shall not preclude that party from making such challenge to the Commission in connection with the Commission's review of a report and recommendation in a case, provided that the party timely made its objection known to the

administrative law judge and that the grounds for such challenge shall be limited to those set forth to the administrative law judge.

§ 2-31 Proceedings After Issuance of Report and Recommendation.

Proceedings following issuance by the administrative law judge of the report and recommendation in the case shall be governed by the Commission's rules (47 RCNY §§ 1-75, 1-76).