



## KENTUCKY COMMISSION ON HUMAN RIGHTS

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### **WHAT TO EXPECT DURING THE INVESTIGATION OF A PUBLIC ACCOMMODATIONS OR EMPLOYMENT DISCRIMINATION COMPLAINT**

This document provides a brief description of what occurs throughout the investigation of a complaint alleging unlawful discrimination in a place of public accommodation or in employment.

#### **I. Generally**

This document provides a brief description of what occurs after a complaint of employment or public accommodation discrimination is filed with the Kentucky Commission on Human Rights (KCHR). KCHR is the state agency tasked with the administrative enforcement of the Kentucky Civil Rights Act, KRS Chapter 344 (KCRA). KCHR's activities are governed by the KCRA, Title 104 of the Kentucky Administrative Regulations, and the Albert Jones Act of 1994, KRS Chapter 13B. These and other materials are available at KCHR's website, <http://kchr.ky.gov>. Individuals without access to the internet may contact KCHR to obtain paper copies of these materials. Individuals with disabilities may request these materials in an alternate and accessible format. If you have any questions about this document or about KCHR's process, please contact the Enforcement Officer assigned to investigate your complaint.

#### **II. Initiating the Complaint Process**

The Complainant can initiate the complaint process by calling or walking into the office, or by completing an online inquiry form found KCHR's website. The Complainant will receive a questionnaire to be completed and returned after the Complainant's initial contact with KCHR. The Complainant will receive a blank affidavit form together with the filed copy of the complaint. The Complainant should fill out this form by stating in their own words the basis of the complaint, sign the form in the presence of a notary, and return it to KCHR via the assigned Enforcement Officer.

#### **III. The Respondent Must Respond to the Complaint and Request for Information**

After the complaint is filed, the Respondent will receive a copy of the complaint and an initial request for information. The Respondent must provide this and other information to KCHR. KCHR

is authorized “to require answers to interrogatories, compel the attendance of witnesses, examine witness under oath or affirmation in person or by deposition, and require the production of documents relevant to the complaint.” KRS 344.190(9). If the Respondent refuses or otherwise fails to provide relevant information, KCHR can apply to the circuit court for an order requiring the Respondent’s compliance.

The more details and supporting documentation the Respondent can provide on this matter in the initial response, in theory, the less the need for additional investigation into the complaint. Therefore, the Respondent, or its designated representative, is required by KRS 344.210(3) to provide KCHR with an answer or a statement of position in response to the complaint. The answer is due within twenty (20) days of receipt of the service of the complaint performed under KRS 344.200. A request to extend the period of time for which the Respondent may file an answer to the complaint may be granted under certain circumstances. If more time is needed, the Respondent should contact the assigned Enforcement Officer. The Respondent or its representative should contact the assigned Enforcement Officer with any questions or concerns about the Respondent’s obligation to respond to the complaint and the available options to do so.

#### **IV. The Enforcement Officer – A Neutral Fact Finder**

The investigation of the complaint will be conducted by a neutral investigator, called the “Enforcement Officer,” charged with the responsibility of fairly and impartially assembling the relevant facts. This is accomplished by gathering and reviewing pertinent documents, witness statements, and other evidence relevant to the complaint. The name of the assigned Enforcement Officer will be identified in a letter mailed to the parties. The Enforcement Officer will be the point of contact at KCHR for both parties during the investigation of the complaint. Both parties should keep the Enforcement Officer informed of any developments, such as changes of address or telephone number. If contact with the Complainant is lost, the Enforcement Officer will make reasonable attempts to find the Complainant. If the Complainant is unable to be found after lost contact, the Enforcement Officer may stop the investigation and dismiss the complaint.

Upon receiving the Respondent’s initial response to the allegations set forth in the complaint, the Enforcement Officer will analyze the information submitted and will contact the Complainant to review the information. This is the Complainant’s opportunity to tell their side of the story. The Complainant should be prepared at this time to discuss with the Enforcement Officer any evidence supporting the allegations and to provide the names and contact information for any witnesses the Complainant believes to have relevant information.

It may be necessary for the Enforcement Officer to come to the Respondent’s place of business to observe the facility, interview employees, etc. These site visits will be conducted in a manner that results in as little disruption to the Respondent’s business as possible. The Enforcement Officer will contact both parties periodically to gather information or to update them on the status of the investigation. The parties can contact the Enforcement Officer at any time they have questions or additional information.

## **V. Conciliation Agreements/Withdrawals with Settlement**

Throughout the KCHR process, the parties will be encouraged to settle their disputes by agreement. In essence, there are two primary methods of settlement:

### ***i. Conciliation***

Conciliation agreements must be approved by the Commission and signed by its Chair and are legally enforceable by KCHR through its attorneys. A conciliation agreement may provide for affirmative remedies including reinstatement of employment, requiring the Respondent to undergo formal discrimination education, and/or requiring the Respondent to submit to monitoring by KCHR designed to ensure that no further acts of unlawful discrimination are committed. Additionally, conciliation agreements may require the Respondent to pay the Complainant monetary damages based on actual losses the Complainant incurred due to the unlawful conduct and compensation for embarrassment or humiliation the Complainant suffered. See KRS 344.230.

### ***ii. Withdrawals with Settlement***

Withdrawals with settlement are private agreements entered into by the parties whereby the Complainant request that the claim be withdrawn from KCHR's process to allow for a privately negotiated settlement. If KCHR approves the request for withdrawal, the case will be withdrawn. Agreements of this kind are not enforceable by KCHR attorneys.

## **VI. Probable Cause – Administrative Hearing Process**

After a neutral investigation, if probable cause is found to believe that an unlawful discriminatory practice has occurred, a detailed notice will be issued advising the parties of the probable cause finding and assigning the case to a KCHR attorney. When assigned to represent a Complainant in a probable cause case, KCHR attorneys serve as counsel and advocate for the Complainant at no charge. Alternatively, the Complainant may elect to retain private counsel. When a Complainant retains private counsel, the assigned KCHR attorney will participate in the administrative proceeding solely as an advocate for the Commonwealth.

Probable cause findings are followed by a detailed written notice of an evidentiary hearing and the assignment of a presiding hearing officer in accordance with KRS Chapter 13B. After the conclusion of the hearing and post-hearing proceedings, the administrative record is then transmitted to the hearing officer, who has up to ninety (90) days to issue a recommended order. Parties may file written exceptions to a recommended order within fifteen (15) days.

KRS 13B.120 directs KCHR to consider the complete administrative record, including the recommended order and the parties' exceptions, before issuing its final order. The final order should be issued within ninety (90) days after KCHR receives the recommended order. If KCHR finds in favor of the Complainant, it may order any or all of the affirmative relief set forth in KRS 344.230.

Parties to KCHR proceedings have the right to file a circuit court action to seek review of any final order of the Commission within thirty (30) days after the final order is mailed. KRS 13B.140. KRS

23A.010 specifies that the action must be filed as an original action (this includes payment of a filing fee) and that summonses must be served on all parties to the circuit court action. KRS 344.240 specifies the counties in which venue is proper for judicial review of a KCHR final order. KRS 13B.150 provides the governing standard of review.

## **VII. No Probable Cause – Complainant’s Options**

In contrast, if probable cause is not found, the Enforcement Officer will prepare a case recommendation and closing form. This form will be submitted to the KCHR Executive Director for review. If the recommendation is accepted by the Executive Director, a dismissal notice is issued and mailed to all parties. In employment and public accommodation matters where no probable cause is found, every complainant can request a one-time reconsideration of the complaint. The written request for reconsideration must be received by KCHR within ten (10) days of the Complainant’s receipt of the dismissal notice.

If reconsideration is requested, the complaint will be assigned to another Enforcement Officer for a neutral and independent review. The Complainant will be asked to provide any additional information supporting the complaint. Enforcement Officers conducting a reconsideration review have legal authority to gather pertinent documents, witness statements, and other relevant evidence. If the reconsideration review results in another finding of no probable cause, the Enforcement Officer will prepare its own case recommendation and closing form and are closed in the same manner as described above.

Where reconsideration is not requested in writing before the 10-day deadline, or when a second dismissal notice is issued after the completion of a reconsideration review, the dismissal becomes final.

## **VIII. Withdrawal Rights**

At any time during the prior to the issuance of a final order, the Complainant may request the withdrawal of the complaint. If the request is granted, a withdrawal request results in the dismissal of the administrative complaint without prejudice to the rights of the Complainant. Following a withdrawal and dismissal without prejudice, the Complainant may retain a private attorney in order to pursue a discrimination claim before a state or federal court, provided that the applicable statute of limitations has not expired.

## **IX. The Right to File an Action to Expedite the Proceedings**

While the administrative proceeding is pending, the parties may file a circuit court action seeking to compel KCHR to issue a notice of hearing or issue a final order. KRS 344.200(2) directs KCHR to issue probable cause findings within thirty (30) days of the filing of the complaint. Within sixty (60) days of the filing of the complaint, KRS 344.210(1) directs KCHR to issue a notice of hearing. If KCHR fails to schedule a hearing in accordance with KRS 344.210(1) or has failed to issue a final order with 180 days after the filing of the complaint, KRS 344.240(2) authorizes the parties to file a circuit court action seeking an order directing KCHR to schedule a hearing or issue its final order. Kentucky courts have repeatedly held that, in the absence of a circuit court action to

expedite the administrative proceedings, a timeline violation raised after the Commission issues a final order will not justify the reversal of the final order.

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Thank you in advance for your cooperation with KCHR. If you have any questions, please contact the Enforcement Officer assigned to your complaint.

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