

CITY OF YORK HUMAN RELATIONS COMMISSION

PRACTICE AND PROCEDURES

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AUTHORITY

The provisions of this Chapter 1, issued under Ordinances 10 and 11, both passed April 5, 1974; and Ordinance 19, passed July 5, 1977; Articles 183 and 185, York City Code, as amended in 1993; Article 185 (replacing Articles 183 and 185), passed April 15, 1997; amended and passed on September 15, 1998; and Act of January 24, 1966, P.L. (1955) 1523, Section 3, as amended March 5, 1970, P.L. 133, No. 52, Section 132, P.S. Section 962.1, unless otherwise noted.

SOURCE

The provisions of this Chapter 1, adopted January 25, 1982, unless otherwise noted, as amended December 23, 1985; revised and ratified on April 15, 1997; and revised and ratified on September 15, 1998; and revised and ratified on February 16 1999.

CHAPTER 1- RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE

SUBCHAPTERS

SUBCHAPTER A - GENERAL PROVISIONS

SUBCHAPTER B - GENERAL REQUIREMENTS

SUBCHAPTER C - PLEADINGS AND OTHER PRELIMINARY MATTERS

SUBCHAPTER D - INVESTIGATION AND DISCOVERY

SUBCHAPTER E - DISMISSAL OF COMPLAINTS AND PRELIMINARY HEARING CONSIDERATIONS

SUBCHAPTER F - FINDING OF PROBABLE CAUSE AND PREHEARING CONCILIATION

SUBCHAPTER G - PREHEARING DISCOVERY

SUBCHAPTER H - PREHEARING CONFERENCES

SUBCHAPTER I - HEARINGS

SUBCHAPTER J - HEARING COMMISSIONER

SUBCHAPTER K - BRIEFS

SUBCHAPTER L - MOTIONS COMMISSIONERS

SUBCHAPTER M - AGENCY ACTION

SUBCHAPTER A - General Provisions

Section 1.1 Construction

The provisions of this chapter shall be construed liberally for the accomplishment of the purposes of the Ordinance.

Section 1.2 Definitions

The following words and terms when used in the general rules of administrative practice and procedures of the City of York Human Relations Commission or in this chapter shall have the following meanings, unless the context indicates otherwise:

- a) Chair - The Chair of the City of York Human Relations Commission
- b) Commission - The City of York Human Relations Commission, its Commissioners, staff and counsel.
- c) Complaint - A verified complaint as required under the Ordinance.
- d) Motions Commissioner - A commissioner designated under Section 1.141 (relating to motions commissioners and motions examiners).
- e) Ordinance - Article 185 of the Codified Ordinances of the City of York.
- f) Party - The complainant or respondent.
- g) Staff - Including but not limited to, the Manager, and other such personnel as the Commission may, from time to time, appoint.
- h) Staff Counsel - The staff attorneys designated by the Commission will assist in the investigation and when probable cause is found, will prosecute the city's interest in allegations of a complaint.

Section 1.3 - Amendments

Amendments to these Practices and Procedures may be made by a vote of two-thirds of the Commission provided notice of the proposed amendments is read at a regular meeting at least thirty (30) days prior to the meeting at which said changes are to be voted on.

Section 1.4 - Reserved

Section 1.5 - Reserved

Section 1.6 - Reserved

Section 1.7 - Reserved

Section 1.8 - Reserved

Section 1.9 - Reserved

Section 1.10 - Reserved

SUBCHAPTER B - General Requirements

Section 1.11 - Captions

- a) Filings before the Commission shall contain a caption setting forth the names of the parties, the docket number of the action, and the name of the pleading or motion, and shall be entitled, "City of York Human Relations Commission."
- b) All filings before the Commission shall clearly indicate the party on whose behalf the filing has been made. If a filing has been made by an attorney on behalf of a party, the attorney shall indicate his or her name and office address. If a party without the benefit of an attorney makes a filing, the party shall clearly indicate his or her name, address and telephone number, if available.
- c) Any filing not made in accordance with subsections (a) and (b) shall be deemed not to have been filed. Parties will be notified accordingly.

Section 1.12 - Appearance in Person

- a) An individual over age 18 may appear on his or her own behalf. An individual under age 18 must be represented by an attorney, parent or legal guardian. A member of a partnership may represent the partnership, a bona fide officer of a corporation, trust or association may represent the corporation, trust or association, and an officer or employee of another agency or of a political subdivision may represent the agency or political subdivision in presenting any submittal to the Commission subject to these rules.
- b) An individual is not required to have an attorney to proceed through the administrative process but may elect to have an attorney at any point therein.

Section 1.13 - Entry of Appearance

- a) Any attorney licensed to practice law in Pennsylvania may represent a party before the Commission. The attorney shall enter his appearance by filing a pleading or motion on behalf of that party or by indicating to the Commission in writing that he is representing the party and desires to enter his appearance on behalf of that party.
- b) Any person appearing or practicing before the Commission in a representative capacity may be required to file a power of attorney with the Commission showing his authority to act in such capacity.
- c) Any party may elect to have a support person of his or her choice throughout the administrative process. Such support person is not required to have personal knowledge of the facts. More than one person will need prior permission.

Section 1.14 – Reserved

Section 1.15 - Number of Copies

Except as otherwise directed or permitted by the Commission, and except as provided by Section 1.136 (relating to briefs), there shall be furnished to the Commission an original and two conformed copies of pleadings, submittals or documents, other than correspondence, which are submitted to the Commission.

Section 1.16 - Service of Documents

- a) By the Commission: Orders, notices and other documents originating with the Commission, including forms of Commission action, complaints and similar process and other documents designated by the Commission for this purpose, shall be served by the office of the Commission by mail, except when service by another method shall be specifically required by the Commission, by mailing a copy thereof to the person to be served, addressed to the person designated in the initial pleading or submittal at his principal office or place of business. If service is not accomplished by mail, it may be effected by anyone authorized by the Commission in the manner provided in 231 Pa. Code. Rules 400-441.
- b) Pleadings, submittals, briefs and other documents, filed in proceedings pending before the Commission, when filed or tendered to the Commission for filing, shall be served upon all participants in the proceedings. The service shall be made by delivering in person or by mailing, properly addressed with postage prepaid, one copy to each participant. If an attorney has entered an appearance on behalf of a party, any documents issued by the Commission, other than a subpoena, may be sent to the party's attorney of record by first class mail.
- c) The date of service shall be the day when the document served is postmarked by the United States mail, or is delivered in person, as the case may be.

Section 1.17 - Time

- a) The complaint shall be filed within 180 days from the date of the occurrence of the alleged unlawful discriminatory practice, unless otherwise required. If the alleged unlawful discriminatory practice is of a continuing nature, the date of the occurrence of such practice will be deemed to be any date subsequent to the occurrence of such practice up to and including the date upon which the unlawful discriminatory practice shall have ceased. The time limits for filing a complaint or other pleading shall be subject to waiver, estopage and equitable tolling.
- b) Any complaint will be deemed filed on the date received by the Commission.
- c) Complaints that do not fully conform with Section 1.21 of this title (relating to the commencement of proceedings by complaint under the Ordinance) will be considered filed on the date received by the Commission but may be quashed at the discretion of the Commission if such nonconformity is not remedied by amendment or otherwise within a reasonable time.

Section 1.18 - Docket

The Commission shall maintain a docket of all proceedings, and each proceeding as initiated shall be assigned an appropriate designation.

Section 1.19 - Reserved

Section 1.20 – Reserved

SUBCHAPTER C - Pleadings and Other Preliminary Matters

Section 1.21 - Commencement of Proceedings

- a) Any proceeding may be commenced by filing a verified complaint with the Commission.
- b) The Commission, by the Manager, or by another person the Commission may authorize, may commence a proceeding by filing a complaint at any office of the Commission.
- c) The Commission will enter the complaint on its official docket and serve the complaint by sending a copy to each named respondent within 10 days of date of the entry of the complaint on the docket, unless otherwise required. A copy will also be sent to the complainant within 10 days of the date of the entry of the complaint on the docket, unless otherwise required.
- d) The respondent shall file with the Commission and serve on each named Complainant, a written, verified answer within 30 days of service of the complaint, unless otherwise required. Upon written request of the respondent, and for good cause shown, the Commission may grant an extension of not more than 30 days in which to file the answer. The respondent shall serve a copy of the answer on each complainant. Where an attorney has entered an appearance on behalf of a named complainant, the respondent shall also serve a copy on the attorney.
- e) Failure to file an answer within the required time will be deemed to place the respondent in default and may result in appropriate action under Article 185.11 (f) or Section 1.23 (d) (dealing with show cause orders).

Section 1.22 - Contents of Complaint and Answer

- a) The complaint may be by letter or other writing and shall set forth the following:
 - 1) The name and address of the person claiming to be aggrieved, or of the Commission, which shall be designated as the complainant.
 - 2) The name and address of the person, employer, owner, lending institution, labor organization, or employment agency alleged to have committed the practice complained of, who shall be designated as the respondent.
 - 3) The particulars of the unlawful discriminatory practice complained about by the Complainant.
 - 4) A verification consisting of a sworn oath or affirmation or an unsworn statement by the signer to the effect that the complaint is made subject to the penalties of 18 Pa.C.S. Section 4904 (relating to unsworn falsification to authorities).
 - 5) Other information as may be required by the Commission.
- b) The answer to the complaint shall be in writing, verified as outlined in subsection (a)(4) above, and so drawn as fully and completely to advise the complainant and the Commission as to the nature of all defenses. The answer shall admit or deny specifically and in detail each material allegation of the complaint, and state clearly and concisely the facts and matters of law relied upon.

Section 1.23 - Allegations of New Matter, Position Statement, Effect of Answer, Effect of Failure to file Answer.

- a) Any allegations of new matter contained in the answer shall be deemed denied without the necessity of a reply.
- b) Respondent shall also have the right to file a formal position statement entitled, "Respondent's Position" that need not conform to Section 1.22(b) (relating to contents of answer).
- c) Averments of fact in the complaint are admitted if not denied specifically or by necessary implication in a timely answer. A statement by the respondent in the answer that after reasonable investigation the respondent is without knowledge or information sufficient to form a belief as to the truth of an averment shall have the effect of a denial.
- d) If the Commission staff determines that a complaint sets forth sufficient facts to raise an inference of unlawful discrimination under the ordinance, and the respondent has failed to deny these facts in an answer, or has failed to file a timely answer, the staff may deem the allegations contained within said complaint as admitted by respondent as per Article 185.11(f).

Section 1.24 – Motions

- a) Motions or other requests for procedural rulings or relief shall be filed with the Commission in writing, set forth the ruling or relief sought, state the grounds therefor and the statutory or other authority relied upon, and include a proposed order.
- b) Motions made during a preliminary or public hearing under this chapter may be stated orally on the record. The presiding officer may require oral or written supplementation as the officer deems necessary or appropriate.
- c) Replies to motions filed in accordance with subsection (a) of this section shall be in writing, except that replies to motions made during a hearing may also be stated orally upon the record. The staff counsel shall reply to motions, which seek to limit the Commission's ability to proceed with a complaint, by making whatever good faith arguments may exist in favor of the Commission's continued ability to proceed.
- d) All written replies to motions filed by Commission staff must be filed within twenty days of the date the motion is received. Ensuring timely replies filed by commission staff will be the responsibility of the Manager and will be monitored by the Commission.
- e) Written motions and replies thereto shall be served by the submitting party upon all parties to the proceeding. (Sec 1.16(b))
- f) Upon the filing and consideration of a motion, any replies thereto, and other information the Commission may deem necessary or appropriate to obtain, the Commission will issue and serve the parties with a written ruling thereon, including the reasons for the ruling. A ruling may be oral when the motion and response were oral.

Section 1.25 - Amendment of Complaint or Answer

- a) The complaint or answer may be amended at any time prior to approval of a hearing on the merits and thereafter by leave of the Commission, hearing commissioners, or permanent hearing examiner.

- b) The complaint may be amended to cure technical defects or omissions, to clarify or amplify allegations made therein, or to add material allegations, which are related to or grow out of the subject matter of the original complaint, and these amendments shall relate back to the original filing date of the complaint.
- c) The complaint may not be amended to delete an allegation under Section 1.26 (relating to complaints seeking relief for persons other than the named complainant) except by leave of the Commission upon a showing that the amendment will not prejudice the interests of the class of unnamed persons upon whose behalf the complaint was brought.

Section 1.26- Complaints Seeking Relief for Persons other than the named Complainant

- a) Whenever a person seeks relief for unnamed persons, other than a cease and desist order, the complaint shall include an allegation to the effect that the complaint is made on behalf of other persons who have been affected by the alleged unlawful discriminatory practice.
- b) The Commission will not enter into an adjustment or settlement of a complaint, which includes a subsection (a) allegation; unless the Commission determines that the adjustment or settlement does not prejudice or, in the alternative, adequately protects the interests of the class of unnamed persons upon whose behalf the complaint was brought.
- c) The inclusion of any person within a class of unnamed persons under subsection (a) does not preclude the person from filing and pursuing an individual complaint of unlawful discrimination before the Commission.

NOTE

Section 1.26 is intended to include the means for those who seek to file class actions and interventions, as well as permission to file an amicus curie (friend of court) brief in support of the issues.

Section 1.27 - Reserved

Section 1.28 - Reserved

Section 1.29 - Reserved

Section 1.30 – Reserved

SUBCHAPTER D - Investigation and Discovery

Section 1.31 - Initiation of Investigation

- a) Upon filing of a complaint, or whenever there is reason to believe that an unlawful discriminatory practice has been committed, the Commission staff will make a prompt investigation in connection therewith.
- b) All investigations conducted by the Commission prior to the approval of a public hearing on the merits of a complaint will be conducted by the Commission staff who may employ the discovery measures set forth in this subchapter.

Section 1.32 - Authorization to Employ Discovery Measures

- a) Prior to the approval of a hearing upon the merits of a complaint, and except as may otherwise be permitted by a preliminary hearing officer as necessary and appropriate for the parties to prepare

for a preliminary hearing, the discovery measures in this subchapter may be employed only by the staff.

- b) After the approval of a public hearing on the merits of a complaint, the discovery measures in this subchapter may be employed by the staff, by the complainant if complainant is not represented by an attorney and by the respondent.
- c) Except as limited by subsections (a) and (b), this subchapter will not be construed to prohibit the voluntary use of any discovery measure that may be agreed upon by all persons affected thereby, without need to apply to the Commission therefor. All parties shall attempt, in good faith, to engage in voluntary discovery prior to the making of an application.

Section 1.33 - Oral Interviews and Other Investigations

- a) Commission staff may interview all persons whose statements may provide information concerning the allegations of the complaint.
- b) Upon initiation of an investigation, the Commission may require the production of all documents, information, records, files or other materials necessary to determine facts relevant to the allegations of the complaint.
- c) Commission staff may require any person charged with an unlawful practice or his officer, employee, director, or agent to furnish information, oral and written, and to furnish documents, records, files or any other materials for inspection, copying, or photographing during the Commission investigation.

Section 1.34 - interrogatories issued by the Commission

- a) Interrogatories may be served by the Commission at any time after the filing of a complaint. The Commission may serve upon any person written interrogatories to be answered in writing by the person served or other authorized personnel. Interrogatories served upon a public or private corporation, partnership or association shall be answered by any officer or agent who is authorized to furnish the requested information.
- b) Supplemental interrogatories or sets of interrogatories may be served.

Section 1.35 - Answers to interrogatories

Answers to interrogatories shall be filed and shall conform to the following rules:

- a) Each interrogatory shall be answered separately and fully in writing.
- b) The answers to a set of interrogatories shall be properly executed as provided in 1 PA Code §33.11 (relating to execution).
- c) The recipient of the interrogatory shall serve a copy of the answers to the interrogatories upon the Commission within 20 days after service of the interrogatories.

Section 1.36 - Issuance of Subpoenas for Investigative Purposes

- a) A request for a subpoena for documents or things shall be submitted to a motions commissioner or presiding officer specifying in writing the books, papers, documents or other material desired and setting forth the general relevance, materiality, and scope of the evidence sought therefrom. The motions commissioner or presiding officer may thereafter sign and cause the subpoena to be issued for service.
- b) A request for the issuance of a subpoena for testimony to require attendance at a deposition or hearing shall be submitted to a motions commissioner or presiding officer specifying in writing the general relevance, materiality, and scope of the evidence sought from the testimony. The motions commissioner or presiding officer may thereafter sign and cause the subpoena to be issued for service.
- c) Any person upon whom a subpoena is served shall file objections, in writing, within the time specified for compliance with the subpoena, except that the time may be extended by the motions commissioner or presiding officer if justice requires. The objections will be reviewed by the motions commissioner or presiding officer, who will rule thereon. The Commission will notify the person of the action or ruling made upon the objections.

Section 1.37 Service of subpoenas

- a) A subpoena may be served by any member of the staff not a party to the proceeding, or by another person, not a party to the proceeding, who is so authorized by the issuer of the subpoena.
- b) A subpoena will be served by exhibiting the original subpoena and handing a copy of the subpoena to one of the following:
 - 1) To the person designated for service.
 - 2) At the residence of the person designated for service, to an adult member of the family with which the designated person resides; but if no adult member of the family is found then to an adult in charge of the residence.
 - 3) At any office or usual place of business of the person designate for service, to the designated person's agent or the person for the time being in charge thereof.
- c) The return of service of a subpoena issued shall include:
 - 1) The time, place and manner of service.
 - 2) The signature of the person serving the subpoena.
- d) The original subpoena, bearing or accompanied by the authorized return, shall be returned to the Commission.

Section 1.38 - Enforcement of Subpoenas

- a) If any document is not supplied, or any appearance is not made in response to a subpoena, the Commission staff may seek to enforce the subpoena by petition to an appropriate court.
- b) Any other subpoena issued by the Commission may be enforced by the party requesting the subpoena by petition to an appropriate court.

Section 1.39 - Procedures for Taking Depositions

- a) Unless notice is waived, no deposition shall be taken except after at least 20 days notice to the participants. Such notice shall be given in writing by the participant proposing to take such depositions. In the notice to take testimony by deposition the participant desiring to take the deposition shall state the name and post office address of the witness, the subject matter concerning which the witness is expected to testify, the time, place and method of taking the deposition, the name and post office address of the notarial officer before whom it is desired that the deposition be taken, and the reason why the deposition should be taken. The other participants may, within the 20 days of notice make any appropriate response to such notice. If the application for the taking of a deposition so warrants, the motions commissioner may issue, within a reasonable time in advance of the time fixed for taking testimony, an authorization naming the witness whose deposition is to be taken, and the time, place, and notarial officer before whom the witness is to testify. However, the time, place and notarial officer so specified may or may not be the same as those named in the notice.
- b) Attendance of the person to be examined by deposition may be compelled by the use of a subpoena as provided in Sections 1.36; 1.38 (relating to issuance of subpoenas; and enforcement of subpoenas).
- c) If a deponent to be examined at a deposition refuses to be sworn or provide affirmation to answer a question, the deposition shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, upon reasonable notice and opportunity for reply to all persons affected thereby, the proponent may apply to a motions commissioner for an order compelling the witness to be sworn or provide affirmation, in whole or in part, which order may be enforced as with a subpoena under Section 1.38.

Section 1.40 - Use of Depositions at Hearings

- a) At the hearing, any part or all of the deposition, so far as otherwise admissible, may be used against any party who was present or represented at the deposition, or who had notice thereof if required, in accordance with one or more of the following provisions:
 - 1) A deposition may be used by any party for the purpose of contradicting or impeaching the testimony of a deponent as a witness.
 - 2) The deposition of a party or of anyone who at the time of the taking of the deposition was an officer, director, or managing agent of a party may be used by an adverse party for any purpose.
 - 3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the hearing commissioners or permanent hearing examiner finds one of the following:
 - i. That the witness is dead.
 - ii. That the witness is at a greater distance than 100 miles from the place of the hearing or is outside this Commonwealth, unless it appears that the absence of the witness was procured by the party offering the deposition.

- iii. That the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment.
 - iv. That the party offering the deposition has been unable to procure the attendance of the witness by subpoena.
 - v. Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with regard to the importance of presenting the testimony of witnesses orally at hearing, to allow the deposition to be used.
- 4) If only part of a deposition is offered in evidence by a party, an adverse party may require that party to introduce all of it which is relevant to the part introduced, and any party may introduce other parts.
- b) Substitution of parties does not affect the right to use depositions previously taken, and, when an action has been dismissed and another action involving the same subject is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken in the former action may be used in the latter as if originally taken therefor.
 - c) Subject to subsection (a), objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.
 - d) A party will not be deemed to make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or a part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this does not apply to the use by an adverse party of a deposition as described in subsection (a) (2). At the hearing, any party may rebut any relevant evidence contained in a deposition.

Section 1.41 - Production of Documents, Information, or Other Material for Inspection, Copying or Photographing during Commission Investigation

- a) Application may be made to a motions commissioner or motions examiner for one or more of the following:
 - 1) Production of and permission to inspect and copy, test or sample documents (including writings, drawings, graphs, charts, photographs, phonograph records, computer data and other compilations of data from which information may be obtained, translated, if necessary, by the party from whom production is sought into reasonably useful form), other materials or tangible things which are in the possession, custody or control of the party from which production is sought.
 - 2) To permit entry upon designated land or other property in the possession or control of the party from whom production is sought for the purpose of inspecting and measuring, surveying, photographing, testing, sampling or otherwise examining the property or any designated object or operation thereon.
- b) The application shall set forth the documents, materials, tangible things, land or property to be inspected with sufficient particularity to allow a determination of their general relevance to the proceedings and shall specify a reasonable time, place and manner of making the inspection and

performing the related acts. A copy of the application shall be served upon the party from whom production is sought, who shall file in writing any objections to the application within 15 days after service of the application and who may file a motion for a protective order as provided in Section 1.43 (relating to protective orders).

- c) If the application so warrants, the motions commissioner or motions examiner will issue an authorization specifying the time, place and manner of making the inspection and performing the related acts, which may or may not be the same as those specified in the application. This authorization will be enforceable as with a subpoena under Section 1.38 (relating to enforcement of subpoenas).

Section 1.42 - Requests for Admission

- a) After the approval of the hearing on the merits of a complaint, any party may send to another party a written request for the admission of the truth of a matter or of the authenticity of any writing, document or record, a copy of which is attached to the request, relevant to the pending proceeding.
- b) Matters referred to in subsection (a) will be deemed admitted unless within 20 days after service of the request the recipient serves upon the requesting party a sworn and properly executed answer admitting, denying or objecting to each item.
- c) Reasons for all objections shall be stated.
- d) All that is not denied in an answer shall be deemed to be admitted, If an answer reads, "denied in part" or "admitted in part," the answer shall also state with specificity that which is denied and that which is admitted.
- e) Upon motion by a party requesting admissions, a motions commissioner or a motions examiner will determine if the answer complies with this section. The motions commissioner or motions examiner may order that the matter is admitted or denied or that the request or answer shall be amended as the circumstances warrant.

Section 1.43 - Protective Orders

- a) Upon motion by the staff, by a party or by the person from whom discovery is sought, the Commission may issue any order which justice requires protecting a party or person from unreasonable annoyance, embarrassment, oppression, burden or expense.
- b) When a motion for a protective order is denied in whole or in part, the Commission may, upon terms and conditions as are just, order that the party or persons provide or permit discovery.

Section 1.44 - Scope of Discovery of the Commission's Records, Documents, and Other Information Relating to a Complaint

The staff of the Commission will not be examined either by interrogatory or deposition except when leave to undertake the examination is granted by the Commission, a motions commissioner, or a motions examiner upon petition alleging that one of the following exists:

- a) The staff person has direct personal knowledge of evidence relevant to the proceeding other than evidence gathered as the result of the investigation.

- b) For other reasons which shall be set forth with particularity, justice requires that the petition be granted.
- c) Discovery has revealed that the staff person will be called as a witness.

Section 1.45 - Exemptions from Discovery

- a) Information which is exempt from discovery includes, but is not limited to, the following:
 - 1) A record, report, memorandum, or communication dealing with the internal practice, policy and procedure of the Commission.
 - 2) A record, report, memorandum or communication of the staff or a staff meeting regarding the institution, progress or result of an investigation of a complaint or regarding matters prepared in anticipation of a hearing.
 - 3) A report, record, memorandum or communication regarding any endeavor to eliminate the unlawful discriminatory practice complained of by conference, conciliation, or persuasion.
 - 4) The work product of an investigator or other staff member made in the course of an investigation of a complaint or in anticipation of or in preparation for a hearing on the complaint or a report, record, memorandum or communication made by the staff during the investigation of a complaint or in anticipation of and in preparation for a hearing on the complaint which is otherwise privileged.
 - 5) A memorandum, statement, or mental impression prepared or obtained by a staff attorney.
 - 6) The identity of confidential informants and sources.
- b) Objections of a party to the Commission staffs assertion of an exemption during prehearing discovery, under subsection (a), shall be made under the enforcement procedures of the particular discovery measure involved, as provided for in this chapter. The Commission will rule upon the objections and may, where justice requires, order that the exemption be waived, in whole or in part, and that appropriate discovery occur.

Section 1.46 - Reserved

Section 1.47 - Reserved

Section 1.48 - Reserved

Section 1.49 - Reserved

Section 1.50 - Reserved

SUBCHAPTER E - Dismissal of Complaints and Review Hearing Considerations

Section 1.51 - Finding of No Probable Cause

- a) If, after investigation, the Manager determines that no probable cause exists to credit the allegations of the complaint or if, during or after investigation the Manager determines that:
 - 1) The case is untimely filed;
 - 2) The case is moot;

- 3) The Commission lacks jurisdiction;
 - 4) The parties have reached an agreement adjusting the complaint; or
 - 5) Another reason exists which legally justifies the dismissal of the complaint, the Manager shall make a finding reflecting that determination.
- b) If a finding under subsection (a) is made, the Manager may close the case or take other action as may be necessary or appropriate. The Manager may appoint, in writing, another staff person who is authorized to close cases in the Manager's absence.
 - c) Whenever a case is closed, the Commission will notify all parties in writing of the closing, together with a statement of the right to request a review hearing and of the right of the complainant to bring an action in the court of common pleas of the county wherein the alleged unlawful discriminatory practice took place.

Section 1.52 – Reserved

Section 1.53 – Reserved

Section 1.54 – Reserved

Section 1.55 – Reserved

Section 1.56 – Reserved

Section 1.57 – Reopening of Cases after final Disposition

- a) Subsequent to the final disposition of a case under this subchapter, the Commission may reopen the case on its own motion, whenever justice so requires.
- b) Prior to reopening a case under this section, the Commission will notify all parties of the proposed action and afford them the opportunity to respond, in writing, thereto.
- c) The Commission may convene a preliminary hearing to determine whether a case should be reopened under this section, as the Commission may deem necessary or appropriate.

Section 1.58 - Reserved

Section 1.59 - Reserved

Section 1.60 – Reserved

SUBCHAPTER F - Finding of Probable Cause and Prehearing Conciliation

Section 1.61 - Finding of Probable Cause

- a) If, after preliminary investigation, the Manager determines that probable cause exists to credit the allegations of the complaint, a finding of probable cause will be made.
- b) If a finding of probable cause is made, the Commission will promptly endeavor to eliminate the unlawful discriminatory practice by conference, conciliation, and persuasion.

Section 1.62 - Conciliation and Adjustment

- a) If the unlawful practice complained of is eliminated by conference, conciliation and persuasion, the material terms of the adjustment may be incorporated into a conciliation agreement.

- b) A conciliation agreement may be entered as a consent order by the Commissioners and shall have the same force and effect as a final order issued by the Commission after a hearing on the merits of a complaint.
- c) When the formal offer of adjustment by a respondent is acceptable to the Commission but not to the complainant, the Commission may close the case and the complainant may proceed in the appropriate court of common pleas.

Section 1.63 - Reconsideration of Adjustment

- a) A party shall have the right to petition the Commission to consider whether another party has complied with the terms of adjustment or settlement, or both.
- b) A party may file a petition under this section regardless of whether a finding of probable cause has been made in the case.
- c) The Commission will consider the petition and take whatever action it deems necessary or appropriate, as justice may require; except that the Commission will not, in any case, enforce an adjustment or settlement which is not in writing and signed by the party against whom enforcement is sought.

Section 1.64 - Notice of Right to Bring an Action in Court of Common Pleas

Upon dismissal of a complaint, the denial of a request for a review hearing, the dismissal of a complaint after the review hearing, if within one year, the Commission has not entered into a conciliation agreement to which the complainant is a party, the Commission will notify the complainant in writing of the right of the complainant to bring an action in the Court of Common Pleas.

Section 1.65 - Conciliation meetings and prehearing conferences

- a) Conciliation meetings in order to provide opportunity for the submission and consideration of offers of settlement, or proposals of adjustment, for settlement of a complaint, may be held between the participants at any time. Such meetings will be conducted by Commission Staff.
- b) Prehearing orders and conferences will be governed by the provisions of 1 Pa. Code §§35.111 - 35.120 (relating to prehearing conferences) except that a prehearing conference may be conducted before a Commissioner or a person authorized by the Commission to serve as a presiding officer.

Section 1.66 - Rescission of Finding of Probable Cause

- a) The Commission may rescind a finding of probable cause, if the Commission determines that the finding is no longer appropriate.
- b) If a finding of probable cause is rescinded the case will thereafter proceed as if the finding had not been made, which may result in the case being closed under Section 1.51 (relating to the dismissal of complaints). If the case is closed, the parties will be notified under Section 1.51(c), which includes, but is not limited to, the right of the complainant to file a timely request for a review hearing pursuant to Section 1.51c (relating to request for review hearing).

Section 1.67 - Reserved

Section 1.68 - Reserved

Section 1.69 - Reserved

Section 1.70 - Reserved

SUBCHAPTER G - Prehearing Discovery

Section 1.71 - Prehearing Discovery

Subsequent to the notification to a respondent of the approval of a hearing upon the merits of a complaint, staff, complainant and also respondent may employ the prehearing discovery measures set forth in this subchapter, in addition to oral interviews and informal requests for documents or other materials and information. Nothing in Sections 1.31 to 1.45 of this title (relating to investigation) shall limit the prehearing discovery devices.

Section 1.72 – Reserved

Section 1.73 – Reserved

Section 1.74 – Reserved

Section 1.75 – Reserved

Section 1.76 – Interrogatories

The rules for use of interrogatories during the course of prehearing discovery shall be the same as the rules for use of interrogatories during the course of Commission investigation set forth in Section 1.34 of this title (relating to interrogatories issued by the Commission); except that the respondent may serve interrogatories only after the Commission has notified the respondent of the approval of a hearing on the merits of a complaint.

Section 1.77 – Depositions

Depositions by oral examination or by written interrogatories may be taken either by the complainant, respondent or by the Commission staff after approval and notification to respondent of a hearing upon the merits of a complaint. Procedure, therefore, is governed by Section 1.39 of this title (relating to investigatory depositions).

Section 1.78 – Reserved

Section 1.79 - Enforcement of Attendance at Depositions and Testimony

Attendance of the persons to be examined at depositions may be compelled in the same manner as set forth in Section 1.39(b)(c) of this title (relating to procedures for taking depositions).

Section 1.80-Production of Documents and Materials for Inspection, Copying and Photographing

Production of documents and materials for inspection, copying and photographing is governed by Section 1.41 of this title (relating to investigatory production), except that motions by the complainant or respondent may be neither filed nor granted except after approval of a public hearing upon the merits of a complaint.

Section 1.81 - Enforcement of Orders for Discovery for Production of Documents and Materials for Inspection, Copying and Photographing

Enforcement shall be as provided in Section 1.41(c) of this title (relating to enforcement of orders).

Section 1.82 - Subpoenas for Prehearing Discovery

- a) Requests for subpoenas may be made by the complainant or the respondent, after approval of a public hearing.

- b) The procedure to be followed shall be the same as provided in Section 1.36 et. seq. of this title (relating to issuance of subpoenas for investigative purposes).

Section 1.83 - Reserved

Section 1.84 - Reserved

Section 1.85 - Reserved

Section 1.86 - Reserved

Section 1.87 – Reserved

Section 1.88 - Reserved

Section 1.89 - Reserved

Section 1.90 – Reserved

SUBCHAPTER H - Conciliation, Adjustment and Prehearing Conferences

Section 1.91 - Conferences to Adjust, Settle or Expedite Proceedings

In order to provide opportunity for the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment, for settlement of a proceeding, or any of the issues therein, or consideration of means by which the conduct of the hearing may be facilitated and the disposition of the proceeding expedited, conferences between the participants for such purposes may be held at any time prior to or during hearings before the Commission, as time, the nature of the proceedings, and the public interest may permit. **Note- See 165 (a)**

Section 1.92 - Conferences to Expedite Hearings

At a prehearing or other conference which may be held to expedite the orderly conduct and disposition of a hearing, there may be considered, in addition to offers of settlement or proposals of adjustment, the possibility of the following:

- a) The simplification of the issues and the scope of the damages sought.
- b) The exchange and acceptance of service of exhibits proposed to be offered in evidence.
- c) The obtaining of admission as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents which might properly shorten the hearing.
- d) The limitation of the number of witnesses.
- e) The discovery or production of data.
- f) Other matters as may properly be dealt with to aid in expediting the orderly conduct and disposition of the proceeding.

Section 1.93 - Initiation of Conferences

- a) The Chair of the Commission or the presiding officers, with or without motion, and after consideration of the probability of beneficial results to be derived therefrom, may direct that a conference be held, and direct the parties to the proceeding, the staff of the Commission and staff counsel to appear thereat to consider the matter enumerated in Section 1.92 (relating to conferences to expedite hearings), Due notice of the time and place of the conference shall be given to all parties to the proceeding, the staff of the Commission and staff counsel.

- b) Parties will be expected to come to the conference fully prepared for a useful discussion of problems involved in the proceeding, both procedural and substantive, and fully authorized to make commitments with respect thereto. The preparation should include, among other things, advance study of relevant material, and advance informal communication between the participants, including requests for additional data and information, to the extent, it appears feasible and desirable. Failure of a participant to attend the conference, after being served with due notice of the time and place thereof, shall constitute a waiver of all objections to the agreements reached, if any, and any order or ruling with respect thereto.

Section 1.94 - Authority of Presiding Officer at Conference

The presiding officer at a conference may dispose of by ruling, irrespective of the consent of the participants, procedural matters which he is authorized to rule upon during the course of the proceeding, and which it appears may appropriately and usefully be disposed of at that stage. In addition, if it appears that the proceeding would be substantially expedited by distribution of proposed exhibits and written prepared testimony reasonably in advance of the hearing session, the presiding officer at his discretion and with due regard for the convenience and necessity of the parties, the Commission staff and staff counsel, may direct the advance distribution by a prescribed date. The rulings of the presiding officer made at the conference shall control the subsequent course of the hearing, unless modified for good cause.

Section 1.95 - Offers of Settlement

Nothing contained in these rules shall be construed as precluding a participant in a proceeding from submitting at any time offers of settlement or proposals of adjustment to all parties and to the agency, or to staff counsel for transmittal to the Commission, or from requesting conferences for that purpose. Unaccepted proposals of settlement or of adjustment or as to procedure to be followed and proposed stipulations not agreed to shall be privileged and are not admissible in evidence against any person claiming such privilege.

Section 1.96 - Refusal to Make Admissions or Stipulate

If a party attending a conference convened under these rules refuses to admit or stipulate the genuineness of a document or the truth of a matter of fact and if the participant requesting the admissions or stipulations thereafter proved the genuineness of the document or the truth of the matter of fact, he may apply to the Commission Chair or presiding officer for an order requiring the other party to pay him the reasonable expenses incurred in making such proof, including reasonable attorney's fees. Unless the Commission Chair or presiding officer finds that there were good reasons for the refusal to admit or stipulate or that the admissions or stipulations sought were of no substantial importance, the order shall be made. An appeal may be taken to the Commission Chair immediately from any such order made by a presiding officer. If a party refuses to comply with such order after it becomes final, the Commission may strike all or any part of such pleadings of such party or limit or deny further participation by such party.

Section 1.97 - Reserved

Section 1.98 - Reserved

Section 1.99 - Reserved

Section 1.100 – Reserved

SUBCHAPTER I – Hearings

Section 1.101 – Hearings

- a) If the unlawful discriminatory practice complained of is not eliminated by conference conciliation or persuasion, the Commissioners or the Manager may approve the convening of a public hearing on the merits of the complaint.

- b) At any other time, the Commissioners may, in their discretion, convene a hearing:
 - 1. In order to expedite the disposition of a preliminary matter in any action before it; or
 - 2. When, in the judgment of the Commission or at the direction of the York City Council, the circumstances so warrant.
- c) Whenever a public hearing is to be convened in accordance with this section, the chairperson will cause to be issued and served on the parties a written notice of the hearing and will designate at least one Commissioner before whom the hearing will be conducted. He or she will be called hearing commissioner.
- d) Any waiver of a hearing by the parties shall be in writing and properly executed.

Section 1.102 - Conduct of Hearings

- a) No testimony or evidence shall be offered or received at any hearing concerning offers or counter-offers of adjustment during efforts to conciliate an alleged unlawful discriminatory practice, except that evidence presented by respondent of such offers or counter-offers shall constitute a waiver of the provisions of this subsection.
- b) Any objection not duly made before the hearing commissioner shall be deemed waived unless the failure or neglect to make such objections is excused for cause by the Commissioner.
- c) When objections to the admission or exclusion are made, the grounds relied upon shall be stated briefly. Formal exceptions are unnecessary and shall not be taken to rulings thereon.

Section 1.103 - Prepared Expert Testimony

- a) Direct testimony of any witness within his special field may be offered as an exhibit, or as prepared written testimony to be copied into the transcript.
- b) Cross examination of the witness presenting such written testimony or exhibit shall proceed at the hearing at which such testimony or exhibit is authenticated if, not less than 10 days prior to such hearing, service thereof is made upon each participant of record, unless the presiding officer for good cause shall otherwise direct.

Section 1.104 - Subpoena for a Hearing upon the Merits

A complainant, respondent or the Commission staff may request the issuance of a subpoena in the same manner as provided in Section 136 of this title (relating to issuance of subpoenas for investigative purposes). See 1.80-1.81.

Section 1.105 - Enforcement, Service, and Proof of Service

Enforcement of a subpoena issued pursuant to Section 1.104 of this title (relating to subpoenas for a hearing upon the merits) shall be by petition to the appropriate court by the party at whose instance the subpoena was issued.

Section 1.106 - Appearances and Failure of Respondent to Appear at Hearing

- a) The hearing commissioner before whom the hearing is held, shall cause to be entered upon the record all appearances, with a notation in whose behalf each appearance is made.
- b) If either the complainant or the respondent fails to appear at the time and place designated for the hearing, proof of notice of the hearing shall be entered upon the record.
- c) Upon failure of a complainant or respondent to appear and entry of proof of notice upon the record, the hearing shall proceed without the party.

Section 1.107 - Order of Procedure

- a) In hearings upon formal complaints, the complainant or other party having the burden or proof, shall open and close, unless otherwise directed by the presiding officer. In hearings on investigations and in proceedings, which have been consolidated for hearing, the hearing commissioner may direct who shall open and close.
- b) Interveners shall follow the parties in whose behalf the intervention is made. Where the intervention is not in support of an original party, the presiding officer shall designate at what stage the intervener shall be heard.
- c) In proceedings where the evidence is peculiarly within the knowledge or control of another party or participant, the order of presentation set forth in subsections (a) and (b) may be varied by the hearing commissioner.
- d) The following shall also apply:
 - 1. The complaints (including attached exhibits), orders to show cause, and answers thereto and similar formal documents upon which the hearings are fixed shall, without further action, be considered as parts of the record as pleadings.
 - 2. In no event, except in the case of a noncontested proceeding, may the pleadings be considered as evidence of fact other than that of the filing thereof unless offered and received in evidence under this part.

Section 1.108 - Presentation by the Parties

- a) Parties and staff counsel shall have the right of presentation of evidence, cross examination, objection, motion and argument. The taking of evidence and subsequent proceedings shall proceed with reasonable diligence and with the least practicable delay.
- b) When objections to the admission or exclusion of evidence before the hearing commissioner are made, the grounds relied upon shall be stated briefly. Formal exceptions are unnecessary and may not be taken to rulings thereon. See 1.102 (b)

Section 1.109 - Limiting Number of Witnesses

The hearing commissioner may limit appropriately the number of witnesses who may be heard upon an issue.

Section 1.110 - Additional Evidence

At any stage of the hearing, the hearing commissioner may call for further evidence upon an issue, and require the evidence to be presented by the party or parties concerned or by the staff counsel, either at that hearing or

at the adjournments thereof. At the hearing, the hearing commissioner may, if deemed advisable, authorize a participant to file specific documentary evidence as part of the record within a fixed time, expiring not less than ten (10) days before the date fixed for filing and serving briefs.

Section 1.111 - Recording of Proceedings

Hearings shall be stenographically reported, and a transcript of the report shall be a part of the record and the sole official transcript of the proceeding. The transcripts shall include a verbatim report of the hearings and nothing shall be omitted therefrom except as directed on the record by the hearing commissioner. After the closing of the record, there shall not be received in evidence or considered as part of the record any document submitted after the close of testimony except as provided in Section 1.110 (relating to additional evidence) or changes in the transcript as provided in Section 1.112 (relating to transcript corrections).

Section 1.112 - Transcript Corrections

Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing and to speak the truth. No corrections or physical changes shall be made in or upon the official transcript of the proceeding, except as provided in this section. Transcript corrections agreed to by opposing attorneys may be incorporated into the record, if and when approved by the hearing commissioner, at any time during the hearing or after the close of evidence, as may be permitted by the hearing commissioner before the filing of his proposed report, but not less than ten (10) days in advance of the time fixed for filing final briefs. The hearing commissioner may call for the submission of proposed corrections.

Section 1.113 - Copies of Transcripts

Availability to participants in public hearings. The Commission will cause to be made a stenographic record of all public hearings and the copies of the transcript thereof as it requires for its own purposes. Participants desiring copies of the transcript may obtain copies from the official reporter upon payment of the fees fixed therefor.

Section 1.114 - Oral Examination

Witnesses shall be examined orally unless the testimony is taken by deposition as provided in Sections 1.77 (relating to depositions) or the facts are stipulated in the manner provided in Section 1.92 (relating to conferences to expedite hearings) or in Section 1.117 (relating to presentation and effect of stipulations) or the testimony is submitted in prepared written form as provided in Section 1.115 (relating to expert witnesses). Witnesses whose testimony is to be taken shall be sworn or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them.

Section 1.115- Expert Witnesses

Written testimony of an expert witness may be received as provided in Section 1.123 (relating to prepared expert testimony), where properly supported by the oral testimony of its author on direct examination, subject to cross-examination and motions to strike.

Section 1.116 - Fees of Witnesses

Witnesses subpoenaed by the Commission may be paid the same fees and mileage as are paid for like services in the courts of common pleas. Witnesses subpoenaed at the instance of participants shall be paid the same fees by the participant at whose instance the witness is subpoenaed; and the Commission, before issuing any subpoena as provided in Section 1.104 (relating to subpoenas), may require a deposit of an amount adequate to cover the fees and mileage involved.

Section 1.117 – Stipulations

Independently of the orders or rulings issued as provided by Section 1.92 (relating to conferences to expedite hearings), the participants may stipulate as to a relevant matter of fact or the authenticity of relevant documents. The stipulations may be received in evidence at a hearing, and when so received shall be binding on the participants with respect to the matters therein stipulated.

Section 1.118 - Form and Admissibility of Evidence

In a proceeding before the hearing commissioner, relevant and material evidence shall be admissible, but there shall be excluded evidence that is repetitious or cumulative, or evidence that is not of the kind, which would affect reasonable and fair-minded individuals in the conduct of their daily affairs.

Section 1.119 - Reception and Ruling on Evidence

The hearing commissioner shall rule on the admissibility of evidence, and shall otherwise control the reception of evidence so as to confine it to the issues in the proceeding. The number of expert witnesses to be heard on an issue may be limited appropriately as provided in Section 1.109 (relating to limiting number or witnesses), or the production of further evidence upon any issue may be called for, as provided in Section 1.110 (relating to additional evidence).

Section 1.120 - Designation of Relevant Portions of Documentary Evidence

Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put in evidence, the participant offering such document shall plainly designate the matter so offered, segregating and excluding insofar as practicable the immaterial or irrelevant parts. If other matter is in such document in such bulk or extent as would unnecessarily encumber the record, such document will not be received in evidence, but may be marked for identification, and, if properly authenticated, the relevant and material parts thereof may be read into the record, or if the hearing commissioner so directs, a true copy of such matter in proper form shall be received in evidence as an exhibit, and copies shall be delivered by the participant offering the same to the other participants appearing at the hearing, who shall be afforded an opportunity to examine the entire document and to offer in evidence in like manner other material and relevant portions thereof.

Section 1.121 - Documents on File with Commission

In case any matter contained in a report or other document on file with the Commission is offered in evidence, such report or other document need not be produced or marked for identification, but may be offered in evidence by specifying the report, document, or other file containing the matter so offered.

Section 1.122 - Public Documents

Whenever there is offered in evidence (in whole or in part) a public document, such as an official report, decision, opinion or published scientific or economic statistical data issued by any of the executive departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government owned corporations) or a similar document issued by a State or its agencies, and such document (or part thereof) has been shown by the offer to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered in evidence as a public document item by specifying the document or relevant part thereof without regard to the requirements of Section 1.125 (relating to copies to parties and Commission).

Section 1.123 - Prepared Expert Testimony

- a) Direct testimony of any witness within his special field may be offered as an exhibit, or as prepared written testimony to be copied into the transcript. Cross examination of the witness presenting such written testimony or exhibit shall proceed at the hearing at which such testimony or exhibit is authenticated if, not less than 20 days prior to such hearing, service thereof is made upon each participant of record, unless the hearing commissioner for good cause shall otherwise direct.
- b) Whenever in the circumstances of a particular case it is deemed necessary or desirable, the hearing commissioner may direct that expert testimony be given upon direct examination shall be reduced to exhibit form or to the form of prepared written testimony and be served and offered in the manner provided in subsection (a). A reasonable period of time shall be allowed for the preparation of such written testimony.
- c) All participants offering prepared written testimony whether in the form of an exhibit, or to be copied into the transcript, shall insert line numbers on each page, in the left hand margin.

Section 1.124 - Records in Other Proceedings

When any portion of the record in any other proceeding before the agency is offered in evidence and shown to be relevant and material to the instant proceeding, a true copy of such record shall be presented in the form of an exhibit, together with additional copies as provided in Section 1.125 (relating to copies of parties and agency), unless:

- a) The participant offering such record agrees to supply, within a period of time specified by the hearing commissioner, such copies at his own expense, if and when so required.
- b) The portion is specified with particularity in such manner as to be readily identified, and upon motion is admitted in evidence by reference to the records of the other proceedings.

Section 1.125 - Copies to Parties and Commission

Except as otherwise provided in these rules, when exhibits of a documentary character are offered in evidence, copies shall be furnished to the hearing commissioner and to the participants present at the hearing, unless the hearing commissioner otherwise direct. In addition, unless otherwise directed by the hearing commissioner, three copies of each exhibit of documentary character shall be furnished for the use of the Commission.

Section 1.126 - Reserved

Section 1.127 - Reserved

Section 1.128 - Reserved

Section 1.129 - Reserved

Section 1.130 – Reserved

SUBCHAPTER J - Hearing Commissioner

Section 1.131 - Powers and Duties of Hearing Commissioner

Hearing commissioner duly designated by the Commission Chair in accordance with subsection (c) of Section 1.101 of this title (related to hearings), will have the authority, as follows:

- a) To rule upon motions or objections, except as set forth in paragraph (2) of this subsection.

- b) To recommend in writing to the Commissioners any ruling on any motion or objection which would constitute a final determination of the proceedings, which motion or objection will be ruled upon by the Commissioners,
- c) To consolidate proceedings for hearing where necessary and appropriate to expedite the matter.
- d) To conduct separate hearings, of separate issues where necessary and appropriate to expedite the matter or where justice so requires.
- e) To hold appropriate conferences before or during hearings.
- f) To regulate the course of hearings, including the recessing, reconvening, and adjournment thereof.
- g) To administer oaths and affirmations.
- h) To rule upon offers of proof and receive evidence.
- i) To require the submission of additional evidence upon any issue by the parties concerned or by staff, either at the hearing or the adjournments thereof.
- j) To issue subpoenas.
- k) To take or cause depositions to be taken.
- l) To call and examine witnesses.
- m) To issue such preliminary rulings, findings, orders, or relief as, in the judgment of the hearing commissioner, will expedite the proceedings.
- n) To exclude from the hearing room or from further participation in the hearing any person who engages in improper conduct before the hearing commissioner.
- o) To take any other action necessary or appropriate to the discharge of the duties vested in the hearing commissioner, consistent with the Ordinance and other authorities under which the Commission functions and with the regulations and policies of the Commission.

Section 1.132 - Reserved

Section 1.133 - Reserved

Section 1.134 – Reserved

Section 1.135 – Reserved

SUBCHAPTER K – Briefs

Section 1.136 – Briefs

Briefs shall not be required except as directed by the hearing commissioner.

Section 1.137 - Reserved

Section 1.138 - Reserved

Section 1.139 - Reserved

Section 1.140 – Reserved

SUBCHAPTER L - Motions Commissioners

Section 1.141 - Motions Commissioners

- a) The Commission Chair may designate one or more Commissioners to act as motions commissioners.
- b) The motions commissioners duly designated by the Commission Chair will have the authority:
 - 1. To rule upon all motions or objections, except that any ruling on any motion or objection which would constitute a final determination of the proceedings will be ruled upon by the Commissioners.
 - 2. To issue Orders relating to discovery during investigation and in preparation for public hearing.

Section 1.142 - Reserved

Section 1.143 - Reserved

Section 1.144 - Reserved

Section 1.145 – Reserved

SUBCHAPTER M - Agency Action

Section 1.146 - Final Orders

- a) If, upon all the evidence, the hearing commissioner find that a respondent has engaged in any unlawful discriminatory practice, he or she shall state his or her findings of fact, conclusions of law and recommendation on the basis of which the Commission may issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take affirmative action where the Commission determines it to be appropriate.
- b) If, upon all the evidence, the hearing commissioner find that a respondent has not engaged in an unlawful discriminatory practice, he or she shall state his or her findings of fact, conclusions of law, and recommendation on the basis of which the Commission may issue an order dismissing the complaint.
- c) All orders issued after public hearing shall be filed in the Commission Office in York and are open to public inspection during regular business hours.
- d) Proposed findings of fact and conclusions of law and proposed final orders may be submitted the Complainant, the Respondent, and Commission staff, but when required by the hearing commissioner, shall be submitted within the time period fixed by said Commissioner.
- e) Final orders will be those orders which are dispositive of the case.

Section 1.147 - Reports of Compliance

When a person subject to the jurisdiction of the Commission is required to do or perform an act by Commission order, there shall be filed with the office of the Commission within thirty (30) days following the date when the requirement became effective, a notice, stating that the requirement has been met or complied with, unless the

Commission, by regulation or order, or by making specific provision therefor in a license or permit: may provide otherwise for the giving of the notice of compliance.

Section 1.148 - Reserved
Section 1.149 - Reserved
Section 1.150 – Reserved

CHAPTER 2 - DISCRIMINATION ON THE BASIS OF DISABILITY

SUBCHAPTERS

SUBCHAPTER A - GENERAL PROVISIONS

SUBCHAPTER B – EMPLOYMENT

SUBCHAPTER C - PUBLIC ACCOMMODATION

SUBCHAPTER A - General Provisions

Section 2.1 – Purpose

The purpose of this chapter is to ensure that all employment and public accommodations subject to the coverage of the Ordinance are conducted, operated, and made available in a manner which does not discriminate on the basis of disability and which will effectively promote integration of disabled people into the mainstream of life in the City of York.

Section 2.2 – Construction

- a) The provisions of this chapter shall be construed liberally for the accomplishment of the purposes of the Ordinance.
- b) The provisions of this chapter will be construed consistently with other relevant Federal, State and City laws and regulations except where such construction would operate in derogation of the purposes of the Ordinance and this chapter.

Section 2.3 – Enforcement

The provisions of this chapter shall be subject to and will be enforced in accordance with the Ordinance, Chapter 1 of this title (relating to special rules of administrative practice and practice and procedure).

Section 2.4 – Definitions

The following words and terms, when used in this chapter, shall have, unless the context indicates otherwise, the following meanings:

- a) **Commission** -- City of York Human Relations Commission.
- b) **Disabled person** -- Includes the following:
 - 1) A person who:
 - A. has a physical or mental impairment which substantially limits one or more major life activities;

- B. has a record of such an impairment; or
 - C. is regarded as having such an impairment
- 2) The term does not include current illegal use or addiction to a controlled substance, as defined in Section 102 of the Controlled Substances Act (P.L. 91-513, 21 U.S.C. Section 802).
- 3) As used in subparagraph (1) of this paragraph, the phrase:
- A. "physical or mental impairment" means a physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin and endocrine or a mental or psychological disorder, such as mental illness, and specific learning disabilities.
 - B. "major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
 - C. "has a record of such an impairment" means has a physical or mental impairment that does not substantially limit major life activities but that is treated by an employer or owner, operator or provider of a public accommodation as constituting such a limitation; has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or has none of the impairments defined in subparagraph (1) (a) of this paragraph but is treated by an employer or owner, operator, or provider of a public accommodation as having such an impairment.
- c) **Facility** - Including but not limited to all or any portion of buildings, structures, equipment, roads, walks, parking lots, fixtures, and other real or personal property.
- d) **Ordinance** -- York City Code, Article 185.
- e) **Non-job-related disability** -- Includes the following:
- 1) Any disability which does not substantially interfere with the ability to perform the essential functions of the employment which a disabled person applies for, is engaged in, or has been engaged in. Uninsurability or increased cost of insurance under a group or employee insurance plan does not render a disability job-related.
 - 2) A disability is not job-related merely because the job may pose a threat of harm to the employee or applicant with the disability unless the threat is one of demonstrable and serious harm.
 - 3) A disability may be job-related, if placing the disabled employee or applicant in the job would pose a demonstrable threat of harm to the health and safety of others.

- f) **Undue hardship** - The factors to be considered in determining whether an undue hardship is imposed by the requirement that a reasonable accommodation be made to a person's disability include but are not limited to the following:
- 1) The overall size and nature of a business, organization, program, or public accommodation, including number of employees, structure, and composition of workforce, and number and type of facilities. However, financial capability to make reasonable accommodations shall only be a factor when raised as part of an undue hardship defense.
 - 2) Good faith efforts previously made to accommodate similar disabilities.
 - 3) The extent, nature and cost of the reasonable accommodation needed.
 - 4) The extent to which disabled persons can reasonably be expected to need and desire to use, enjoy or benefit from the employment, or public accommodation which is the subject of the reasonable accommodation in question.
 - 5) Legal or proprietary interest in the subject of proposed reasonable accommodations, including authority to make such accommodations under the terms of any bona fide agreement, such as a lease, governing or describing rights and duties with respect to the subject.

Section 2.5 - General Prohibitions

- a) Disabled persons shall not be limited, classified or segregated in a way that adversely affects their opportunities to use, enjoy or benefit from employment and public accommodations subject to the coverage of the ordinance; except that this subsection shall not be construed so as to impose an undue hardship.
- b) Disabled persons shall not be denied the opportunity to use, enjoy or benefit from employment and public accommodations subject to the coverage of the act where the basis for such denial is the need to make reasonable accommodations, unless the making of reasonable accommodations would impose an undue hardship.

Section 2.6 - Access

- a) Every place of employment or public accommodation for which final design and construction plans are completed after November 6, 1978 shall be designed and constructed without architectural and other barriers or omissions that interfere with effective use and enjoyment of, benefit from, ingress to, egress from, and mobility within buildings, work areas, offices, facilities and the like, by disabled persons.
- b) After November 6, 1978, when all or part of a place of employment or public accommodation is subject to substantial alteration or alteration that could affect use by persons with a disability, alterations shall be planned and executed without architectural and other barriers or omissions that interfere with effective use and enjoyment of, benefit from, ingress to, egress from and mobility within the altered portion by disabled persons.
- c) With respect to existing facilities, employers and owners, operators or providers of public accommodations shall make reasonable accommodations to disabled persons by eliminating architectural and other barriers or omissions that interfere with effective use and enjoyment of,

benefit from, ingress to, egress from and mobility within buildings, work areas, offices, facilities and the like by disabled persons.

- d) An employer or owner, operator, provider of a public accommodation shall be deemed:
 - 1) To be exempt from the requirements of this section to the extent that they impose an undue hardship; and
 - 2) To have complied with this section if design, construction or alteration is in conformance with relevant specifications of:
 - A) The Fair Housing Act (Public Law 90-284, 42 U.S.C. §3601 et. seq.);
 - B) Americans with Disabilities Act of 1990 (Public Law 101-336, 42 U.S.C. § 12101 et. seq.); and
 - C) The act of September 1, 1965 (P.L. 459, No. 235), entitled, as amended, "An act requiring that certain buildings and facilities adhere to certain principles, standards, and specifications to make the same accessible to and usable by persons with physical handicaps, and providing for enforcement." , known as the Architectural Barriers Law.
- e) Departures from the particular standards noted in subsection (d) of this section shall be deemed to have satisfied the requirements of this chapter if it is evident that equivalent access or equivalent opportunity to use, enjoy or benefit in an integrated setting is thereby provided.

Section 2.7 - Reserved

Section 2.8 - Reserved

Section 2.9 - Reserved

Section 2.10 – Reserved

SUBCHAPTER B – EMPLOYMENT

Section 2.11 - Pre-employment Process

- a) No person shall be denied employment, promotion or any other term, condition, or benefit of employment solely for refusing to take a test, submit to a process, or answer a question prohibited by this section.
- b) An employer shall not make use of any employment test, device or other selection criterion that screens out or tends to screen out persons with a disability unless both of the following apply:
 - 1) The test, device, or other selection criterion is job-related for the position in question or a demonstrably related position.
 - 2) Alternative job-related tests, devices or criteria that do not screen out or tend to screen out as many disabled persons are not shown by the Commission or the applicant to be available.
- c) An employer shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factors the test purports to measure rather than reflecting the applicant's or

employee's impaired sensory, manual, or speaking skills, except where those skills are the factors that the test purports to measure.

- d) Except as provided in subsections (f) and (g) of this section, pre-employment inquiries that are intended to reveal or that may have the tendency to reveal the existence of a present or recurring disability shall be limited to those necessary to determine whether the disability is job-related; however, any employee or applicant to whom such an oral or written inquiry is directed shall be provided the opportunity to explain why the disability is non-job-related, including what special efforts the employee or applicant makes or what reasonable accommodations can be made to render the disability non-job-related.
- e) An employer shall not deny reasonable requests from an applicant for assistance in completing the application process.
- f) When an employer is taking remedial action to correct the effects of past discrimination or is taking voluntary action to overcome the effects of conditions that resulted in limited opportunities for disabled persons, the employer may invite applicants for employment to indicate whether and to what extent they have a non-job-related disability, provided that:
 - 1) The employer states clearly on a written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and
 - 2) The employer states clearly that the information is being requested on a voluntary basis, that it will be kept confidential subject to the exceptions set forth in Section 2.12 (relating to eliciting and disseminating information concerning an employee's disability), and that refusal to provide it will not subject the applicant or employee to adverse treatment.
- g) Nothing in this chapter shall be deemed to preclude a bona fide medical examination; provided that all similarly situated employees or applicants are subject to the same examination without regard to disability.

Section 2.12 - Eliciting and Disseminating Information Concerning an Employee's Disability

Information concerning a disability, medical condition, or medical history of an employee, whether past, present, or recurring, shall be accorded confidentiality as medical records and shall be retained only through the use of forms accorded confidentiality as medical records. Such information may only be disseminated with the permission of the employee or when the employer can show a demonstrable business necessity for such dissemination including but not limited to the following:

- a) Responsible supervisor may be provided relevant information regarding restrictions on the work or duties of disabled persons and regarding necessary accommodations.
- b) First aid, safety, and other personnel may be provided relevant information where appropriate, if the condition might require emergency treatment or extraordinary measures by such personnel in the event of a safety hazard.
- c) Government agencies investigating compliance with any law may be provided relevant information upon request.

- d) Authorized representatives of a labor organization may be provided relevant information in the context of a bona fide labor dispute or grievance procedure.
- e) Insurers may be provided relevant information upon request for bona fide insurance purpose.

Section 2.13 - Equipment Modification

- a) An employer shall make reasonable accommodations by modifying equipment and tools so that they can be used by a disabled employee; provided that such modification shall not impose an undue hardship upon the employer.
- b) A disabled person shall be allowed to provide his own equipment or tools in order to function properly in the job applied for or engaged in.
- c) In determining whether or not an undue hardship is imposed by the requirements that reasonable accommodations be made in accordance with this section, factors to be considered in addition to those appearing in Section 2.4 of this title (relating to the definition of undue hardship) include but are not limited to:
 - 1) The effect such modification has on use of the equipment by others;
 - 2) The effect such modification has on warranties governing the equipment; and
 - 3) The permissibility of making such modifications under applicable health and safety laws.

Section 2.14 - Job Modification

- a) An employer shall make reasonable accommodations by modifying a job, including but not limited to modification of duties, scheduling, amount or nature of training, assistance provided, and the like, provided that such modification shall not impose an undue hardship.
- b) Nothing in this section shall be construed to require application of different production, attendance, or disciplinary standards for the disabled worker.

NOTE

The Commission considers the requirement of a job modification subject to the undue hardship defense to be consistent with a fundamental principle that underlies this chapter, to wit that some degree of special treatment or "reasonable accommodation" is within the contemplation of the Ordinance. The Commission looks to the Ordinance for a definition of "non-job related disability" which indicates that a disability is only job related if it substantially interferes with essential functions of a job. Conversely, a non-substantial interference, or interference with non-essential functions does not make a disability job related. Thus, the Commission expressly rejects the suggestion that any need to modify a job renders a disability job related. Rather, the Commission believes that the General Assembly and City Council intended disabled people to receive, not identical treatment, but treatment that would create for them effective equality of opportunity. Subsection (b) clarifies that a disability is job related if it would require changes in production attendance or disciplinary standards. However, this subsection is, of course; subject to the general requirement to make reasonable accommodation, as set forth in 2.5 (b).

Section 2.15 - Disabilities not Presently but Potentially Job-related

- a) An employer shall not terminate, subject to different terms or conditions of employment, or refuse to hire or promote an employee or applicant because of a present disability which is not job-related but which may worsen and become job related or because of a past job-related disability which may or may not recur; provided that this subsection shall not be construed so as to impose an undue hardship on the employer.
- b) In determining whether or not an undue hardship is imposed by the requirements of subsection (a) of this section to be considered in addition to those appearing at 2.4 (relating to the definition on undue hardship factors include but are not limited to:
 - 1) the length, cost and nature of training required for the job; and
 - 2) The length of service the employer can reasonably expect before the employee's disability is likely to become job related.

Section 2.16 - Reserved

Section 2.17 - Reserved

Section 2.18 - Reserved

Section 2.19 - Reserved

Section 2.20 – Reserved

SUBCHAPTER C - PUBLIC ACCOMMODATIONS

Section 2.21 – Generally

If a disabled person, with reasonable accommodation, meets all the essential eligibility requirements for and is similarly situated with able-bodied persons in terms of need and desire to use, enjoy or benefit from a public accommodation, then reasonable accommodations shall be made to assure the person opportunity substantially equivalent to that of able-bodied persons to use, enjoy, and benefit from the public accommodation in an integrated setting; provided that nothing in this section shall be construed so as to impose an undue hardship upon any owner, operator, or provider of a public accommodation, and provided further that nothing in this section shall be construed so as to impose a demonstrable threat of harm to the health and safety of others.

Section 2.22 - Reserved

Section 2.23 - Reserved

Section 2.24 - Reserved

Section 2.25 – Reserved

Section 2.26 - Reserved

CHAPTER 3 - SEX DISCRIMINATION

SUBCHAPTERS

SUBCHAPTER A - GENERAL PROVISIONS

SUBCHAPTER B - FRINGE BENEFITS AND EMPLOYMENT POLICIES RELATING TO PREGNANCY AND CHILDBIRTH

SUBCHAPTER C - SEXUAL HARASSMENT

SUBCHAPTER A - GENERAL PROVISIONS

Section 3.1 Construction

The provisions of this Chapter shall be construed liberally for the accomplishment of the purposes of the Ordinance.

Section 3.2 – Enforcement

The provisions of this Chapter shall be subject to and will be enforced in accordance with the Ordinance, Chapter 1 of this title (relating to special rules of administrative practice and procedure) and provisions 1 PA Code Chapter 35 (relating to general rules of administrative practice and procedure) specifically cited in Chapter 1 of this title.

Section 3.3 – Definitions

The following words and terms, when used in this Chapter, shall have, unless the context indicates otherwise, the following meanings.

- a) **Commission** -- City of York Human Relations Commission.
- b) **Ordinance** -- York City Code Article 185.

Section 3.4 - Reserved

Section 3.5 – Reserved

Section 3.6 - Reserved

Section 3.7 - Reserved

Section 3.8 - Reserved

Section 3.9 - Reserved

Section 3.10 – Reserved

SUBCHAPTER B. FRINGE BENEFITS AND EMPLOYMENT POLICIES RELATING TO PREGNANCY AND CHILDBIRTH

Section 3.11 - Fringe Benefits

- a) "Fringe benefits," as used herein, includes medical, hospital, accident, life insurance, and retirement benefits; profit-sharing and bonus plans; leave; and other terms, conditions, and privileges of employment.
- b) It shall be an unlawful employment practice for an employer to discriminate between men and women with regard to fringe benefits.
- c) Where an employer conditions benefits available to employees and their spouses and families or whether the employee is the "head of the household" or "principal wage earner" in the family unit, the benefits tend to be available only to male employees and their families. Due to the fact that such conditioning discriminatorily affects the rights of women employees, and that "head of household" or "principal wage earner" status bears no relationship to job performance, benefits which are so conditioned will be found to be a prima facie violation of the prohibitions against sex discrimination contained in the Ordinance.

- d) It shall be an unlawful employment practice for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees or to make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees which are not made available for male employees. An example of such an unlawful employment practice is a situation in which wives of male employees receive maternity benefits while male employees receive no such benefits.
- e) It shall not be a defense under the Ordinance to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other.
- f) It shall be an unlawful employment practice for an employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex, or which differentiates in benefits on the basis of sex.

Section 3.12 – Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

- a) Disability due to pregnancy or childbirth - Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job related purposes, disabilities and should be treated as such in written and unwritten employment practices and policies.
- b) Pregnancy - The state of being in gestation. Pregnancy is a physiological process. All pregnant women, however, have a variable degree of disability on an individual basis during which time they are unable to perform their usual activities. These regulations relate to all pregnancies without regard to the marital status of the mother.

Section 3.13 - Pregnancy and Childbirth

- a) A written or unwritten employment policy or practice which excludes from employment opportunities applicants or employees because of pregnancy, childbirth, or related medical conditions is deemed a prima facie violation of the Ordinance.
- b) Written and unwritten employment practices and policies regarding job benefits and job security, including but not limited to, commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.
- c) Written or unwritten employment policies and practices, regarding job benefits and job security including, but not limited to, commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement and payment under any health or disability insurance or sick leave plan, formal or informal, shall be applied to permanent disability due to pregnancy, childbirth, or related medical conditions on the same terms and conditions as they are applied to other permanent disabilities.
- d) Mandatory maternity leave policies which require a pregnant employee to take leave automatically at a specified time during pregnancy or to remain away from work after she has recovered from her

disability are in violation of the Ordinance. An employer shall accept the determination of a pregnant employee's physician regarding pregnancy-related disabilities where it accepts such medical judgment regarding other disabilities.

- e) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Ordinance if it has a disparate impact on employees of one sex and is not justified by business necessity.

Section 3.14 - Reserved

Section 3.15 - Resented

Section 3.16 - Reserved

Section 3.17 - Resented

Section 3.18 - Reserved

Section 3.19 - Reserved

Section 3.20 – Reserved

SUBCHAPTER C - SEXUAL HARASSMENT

Section 3.21 - Sexual Harassment

- a) Harassment on the basis of sex is a violation of the Ordinance. The principles involved here also apply to race, color, religious creed, age, national origin, ancestry, familial status, disability or use of a support animal. Unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
 - 1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,
 - 2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or
 - 3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.
- c) Applying general Ordinance principles, an employer, employment agency or labor organization, etc. (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisor or agency capacity.
- d) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

- e) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases, the Commission will consider the extent of the employer's control and any other legal responsibility, which the employer may have with respect to the conduct of such non-employees.
- f) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under the Ordinance, and developing methods to sensitize all concerned.
- g) Other related practices: Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or request for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified but denied that employment opportunity or benefit.
- h) Same gender sexual harassment is actionable under Title VII and this ordinance.

NOTE

See, *Oncala vs. Sundowner Offshore Services*, No 96-568, 1998, U.S. Lexis 1599, March 4, 1998 (Supreme Court held that same gender sexual harassment is actionable under Title VII if the conduct complained of satisfies the requirements generally).

Section 3.22 - Reserved

Section 3.23 - Reserved

Section 3.24 - Reserved

Section 3.25 - Reserved

Section 3.26 - Reserved

CHAPTER 4- COMMISSION PRACTICES AND PROCEDURES

SUBCHAPTERS

SUBCHAPTER A – GENERAL REQUIREMENTS

SUBCHAPTER B – STAFF

SUBCHAPTER C - COMMITTEES

SUBCHAPTER D – MEETINGS

SUBCHAPTER E - REMOVAL OF A COMMISSIONER FOR CAUSE

SUBCHAPTER F - AMENDMENTS

SUBCHAPTER A - General Requirements

Section 4.1 – Name

As prescribed in the City of York Human Relations Ordinance, the name of this Commission shall be the City of York Human Relations Commission.

Section 4.2 - Purpose

The purpose of the Commission shall be to administer and enforce the provisions of the City of York Human Relations Ordinance. The Commission shall adopt, promulgate, amend, ratify and rescind rules and regulations to effectuate the policies and provisions of this ordinance. These policies, rules and regulations supersede any by-laws or committee work product.

Section 4.3 – Membership

- a) The Commission shall consist of those citizens who are duly appointed and qualified under Art. 185.10(a).
- b) Provisions may be made to include residents of any municipality outside of the City of York which utilizes the provisions of Art. 185.15 (relating to additional coverage of the City of York Human Relations Commission) and appointed by the appropriate municipal official.

Section 4.4 – Officers

- a) The officers of the Commission shall be the Chair; Vice-Chair; and Secretary/Treasurer.
- b) The officers shall perform the duties normally associated with their respective offices, and as required under the requirements of the City of York Human Relations Ordinance and these regulations.
- c) Officers shall be elected by the Commission from its membership. Each officer shall serve a term of one year.
- d) Any vacancy shall be filled as required in the City of York Human Relations Ordinance.

Section 4.5 - Duties of Commissioners

Duties of Commissioners serving on the City of York Human Relations Commission are outlined in Art. 185.10(b).

Section 4.6 - Reserved

Section 4.7 – Reserved

Section 4.8 - Reserved

Section 4.9 – Reserved

Section 4.10 – Reserved

SUBCHAPTER B – Staff

Section 4.11 – Staff

The Commission may appoint staff, including but not limited to, the Manager and other such personnel as it deems necessary, fix compensation and prescribe duties as outlined in the City of York Human Relations Ordinance and these regulations.

Section 4.12 - General Duties of Staff

Duties of the staff shall include, but not be limited to, the following:

- a) Receiving, initiating, amending, processing, serving, and investigating formal and informal complaints;
- b) Conducting conferences, conciliations, and such other meetings as the regulations and the applicable statutes provide;
- c) Determining whether or not probable cause exists to credit the allegations of the complaint;
- d) Advising and educating the public and issuing publications, notices, recommendations, and guidelines to effectuate the policies and purposes of the regulations and applicable ordinance.

Section 4.13- City of York Human Relations Commission Manager

In addition to the above duties, the Manager is responsible for planning, coordinating, and supervising the work of the City of York Human Relations Commission. By its very nature, the position of Manager is to be fiduciary to the Commission, serving as the liaison to the City of York and any other municipality, which utilizes the provisions of Art. 185.15 to join the Commission. The Commission has been established to prevent discrimination, prejudice, bigotry and intolerance against persons or groups because of race, color, national origin, ancestry, religious creed, sex, age, disability, sexual orientation, familial status or use of a guide dog, in the areas of housing, employment, and public accommodations. The duties and responsibilities of the Manager shall be as follows:

- a) General Duties
 - 1) Formulate and develop plans for carrying out the objectives of the City of York Human Relations Commission.
 - 2) Act as an advocate for all clients.
 - 3) Attend meetings and conferences related to the policies and programs of the local Commission.
 - 4) Serve as an ex-officio member of all committees as needed.
- b) Office Management
 - 1) Supervise the management of the City of York Human Relations Commission offices.
 - 2) Supervise, train, and evaluate all paid staff and volunteers.
 - 3) Prepare budgets for submission to the City Council and any other member municipality.
 - 4) Control office expenditures to remain within the budget.
 - 5) Approve all financial transactions.
- c) Client Advocacy
 - 1) Investigate, or supervise the investigation of, each complaint until a conclusion is reached. These investigations shall include site visits if needed, and a thorough review of all records and references to the case.

- 2) Supervise, conduct and document all fact-finding conferences with an emphasis on maximum advocacy. It is essential that all clients be treated with dignity and respect. All resources are to be utilized in establishing the case properly.
- d) Outreach
- 1) It is generally recognized that intergroup conflict and tensions may require solutions generated by inter-municipal cooperation outside the jurisdiction of the Commission. Staff is recognized as an available resource to these groups.
 - 2) Develop a network and meet regularly with leaders and/or directors of community groups relating to an Outreach program.

NOTE

It is the Commission staff, and not the Commissioners, which is the body vested with the responsibility for determining whether probable cause exists and conducting conferences and conciliation meetings. The court, therefore, determined that the Commission, which acts as the ultimate finder of fact, did not improperly commingle its prosecutorial and adjudicatory functions and deprive a party of its due process rights. See *George Clay Steam Fire Engine and Hose Co. vs. Human Relations Commission*, 639 A. 2d. 893 (Pa. Comwth. 1994).

Section 4.14 - Reserved

Section 4.15 - Reserved

Section 4.16 - Reserved

Section 4.17 - Reserved

Section 4.18 - Reserved

Section 4.19 - Reserved

Section 4.20 – Reserved

SUBCHAPTER C – Committees

Section 4.21 – Committees

- a) The Chair shall serve as ex-officio member of all committees.
- b) All standing committee members shall be appointed at the first regular meeting following the election of officers.

Section 4.22 - Standing Committees

The standing committees of the Commission are:

- a) Executive Committee
 - 1) This committee shall consist of the Chair, Vice-Chair, and Secretary Treasurer of the Commission.
 - 2) This committee shall insure that the letter and spirit of the City of York Human Relations Ordinance are complied with and its regulations adhered to by Commission members and staff.

- 3) The executive committee acts for the Commission between meetings of the Commissioners but any action taken must be presented to the full Commission for discussion and approval.
- b) Budget and Finance Committee
- 1) This committee shall consist of the Secretary/Treasurer and at least two Commission members appointed by the Chair of the Commission. The Secretary/Treasurer shall serve as Chair of the committee.
 - 2) This committee shall meet at the call of the Secretary/Treasurer and report its activities at each regular meeting of the Commission.
 - 3) This committee will oversee the fiscal operation of the City of York Human Relations Commission's office and establish such fiscal guidelines and procedures to be followed by the staff so as to insure a just and accurate accounting of Commission funds.
 - 4) This committee will review the City of York Human Relations Commission budget, as prepared by the Manager for submission to City Council and any other municipality under Art. 185.15 for each fiscal year. Said budget will be formally presented not later than the tenth calendar month of each operational year or at such other time as may be required by City Council or any other municipality under Art. 185.15.
- c) Personnel Committee
- 1) This committee shall consist of at least three members of the Commission appointed by the Chair.
 - 2) This committee shall make recommendations to the Commission regarding:
 - A. Hiring professional staff;
 - B. Discharge of professional staff; and
 - C. Internal personnel matters.
 - 3) All matters pertaining to nonprofessional staff shall be considered by the committee upon recommendation of the Manager.
- d) Planning and Community Relations Committee
- 1) This committee shall consist of at least three members of the Commission appointed by the Chair.
 - 2) This committee shall study and identify community needs and recommend program priorities to the Commission.
 - 3) This committee shall oversee the Commission's outreach and public relations activities.
 - 4) This committee shall organize community events to create awareness of problems and to recognize achievements in human relations.

- 5) This committee will also include any social media.
- e) Nominations and Leadership Development Committee
 - 1) This committee shall consist of at least three members of the Commission appointed by the Chair.
 - 2) This committee shall search out and, from time to time, submit to the appropriate appointing official, persons who are eligible and willing to serve as Commissioners.
 - 3) This committee shall no later than September of each year prepare a slate of officers to be voted on at the next regular meeting.
- f) Social Media Committee
 - 1) Members of this committee will actively participate in forming and carrying out the social media strategy of the commission.
 - 2) They will attend other committee meetings, bring ideas and creative energy to the group, and implement strategies as assigned, including the following:
 - A. Develop and manage social media and online strategies for the commission.
 - B. Coordinate the flow of information about the commission to our commissioners and the community, in general.
 - C. Oversee social media profiles such as Twitter, Facebook, and LinkedIn and oversees the section of the York City website.
 - D. Serve as the commission's social media point person for all commissioners and committee chairs.
 - E. Manage a committee of volunteers who contribute to the commission's social media and online community.
 - F. Monitor the Internet for City of York Human Relations Commission posts/news and report to the commissioners a minimum of once a month.
 - G. Post articles to the York City website/social media tools, as needed.
 - H. Coordinate with the members of the outreach committee to post photos, etc., on the appropriate social media profiles.
 - I. Stay abreast of new communication tools on the Internet and make recommendations to the commission, as appropriate.

Section 4.23 - Special Committees

Special committees shall be appointed by the Chair in response to specific circumstances as may arise during the course of the Commission's activities.

Section 4.24 - Reserved

Section 4.25 – Reserved

Section 4.26 - Reserved

Section 4.27 - Reserved

Section 4.28 - Reserved

Section 4.29 - Reserved

Section 4.30 – Reserved

SUBCHAPTER D – Meetings

Section 4.31 - Regular Meetings

Regular meetings of the Commission shall be held at least 8 times a year, with the dates, times and place of such meetings published at the beginning of the year.

Section 4.32 - Special Meetings

Additional meetings may be called by the Chair at his or her discretion or on petition of any three members of the Commission.

Section 4.33 - Rules of Order

Robert's Rules of Order (revised) shall be the authority for the conduct of the meetings in conjunction with Act No. 175 of 1974, Pennsylvania's "Sunshine Law," as interpreted by the Attorney General of Pennsylvania, September 1974.

Section 4.34 – Quorum

One more than one-half of the currently serving members of the Commission shall constitute a quorum.

Section 4.35 - Agenda Order

The following, so far as applicable, shall be the order of business at each meeting of the Commission:

- a) Roll Call
- b) Minutes
 - 1) Consideration of minutes of last regular meeting and any special meetings held subsequently, and
 - 2) The approval or correction of minutes.
- c) Report of the Commission Chair
- d) Report of the Secretary/Treasurer
- e) Report of Standing Committees
- f) Report of Special Committees
- g) Report of the Manager
- h) Communications
- i) Unfinished Business
- j) New Business
- k) Public Comment* (limited to three minutes)

Note*

Public comment may be placed at the beginning of a meeting if the agenda has been posted prior to the meeting.

Section 4.36 - Reserved

Section 4.37 - Reserved

Section 4.38 - Reserved

Section 4.39 - Reserved

Section 4.40 - Reserved

SUBCHAPTER E - Removal of Commissioner for Cause

Section 4.41 - Cause for Removal of Commissioner

- a) The following factors shall be found just cause for the removal of a commissioner for cause:
 - 1) Any Commissioner found guilty of discrimination shall automatically forfeit his or her office.
 - 2) Any Commissioner who without excuse fails to attend three consecutive regular meetings shall forfeit his or her office.
 - 3) Any Commissioner deemed by a majority of the Commission to be guilty of misfeasance or malfeasance shall be removed from office by City Council, or other municipal body under Art. 185.15, upon recommendation of the Commission.
- b) In the event of removal of Commissioners for any cause, or by resignation, the Commission shall report such vacancy to the Mayor, or other appointing official under Art. 185.15, within thirty (30) days, along with a request that the Mayor, or other appointing official under 185.15, submit the appointment of a replacement to the requisite approving authority (City Council or other municipal body under Art. 185.15).

Section 4.42 - Reserved

Section 4.43 - Reserved

Section 4.44 - Reserved

Section 4.45 – Reserved

Section 4.46 – Reserved

SUBCHAPTER F – Amendments

Section 4.47 - Reserved

Section 4.48 - Reserved

Section 4.49 - Reserved

Section 4.50 – Reserved