

CHAPTER 42. SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE

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Authority

The provisions of this Chapter 42 issued under section 35 of the Administrative Agency Law (71 P.S. § 1710.35) (Reserved); and section 7(d) of the Pennsylvania Human Relations Act (43 P.S. § 957(d)), unless otherwise noted.

Source

The provisions of this Chapter 42 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887, unless otherwise noted.

Cross References

This chapter cited in 16 Pa. Code § 41.203 (relating to enforcement); 16 Pa. Code § 44.3 (relating to enforcement); and 16 Pa. Code § 45.3 (relating to enforcement).

Subchapter A. GENERAL PROVISIONS

- Sec. 42.1. Applicability of general rules.
- 42.2. Construction.
- 42.3. Definitions.

§ 42.1. Applicability of general rules.

(a) Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code Part II (relating to general rules of administrative practice and procedure), is applicable to the activities of and proceedings before the Commission, except as otherwise

provided in this chapter or where inconsistent with this chapter, the act or the Fair Educational Opportunities Act.

(b) The following sections of the general rules of administrative practice and procedure are not applicable to activities of and proceedings before the Commission:

- (1) 1 Pa. Code § 33.3 (relating to incorporation by reference).
 - (2) 1 Pa. Code § 33.4 (relating to single pleading or submittal covering more than one matter).
 - (3) 1 Pa. Code § 35.1 (relating to applications generally).
 - (4) 1 Pa. Code § 35.2 (relating to contents of applications).
 - (5) 1 Pa. Code § 35.14 (relating to orders to show cause).
 - (6) 1 Pa. Code § 35.20 (relating to appeals from action of staff).
 - (7) 1 Pa. Code § 35.23 (relating to protest generally).
 - (8) 1 Pa. Code § 35.24 (relating to effect of protest).
 - (9) 1 Pa. Code §§ 35.27—35.32 (relating to intervention).
 - (10) 1 Pa. Code §§ 35.36—35.39 (relating to answers).
 - (11) 1 Pa. Code § 35.41 (relating to satisfaction of complaints).
 - (12) 1 Pa. Code §§ 35.101—35.106 (relating to general; notice of hearing).
 - (13) 1 Pa. Code § 35.125(b) (relating to order of procedure).
 - (14) 1 Pa. Code § 35.152 (relating to fees of officers and deponents).
 - (15) 1 Pa. Code §§ 35.164 and 35.165 (relating to evidence).
 - (16) 1 Pa. Code §§ 35.178—35.180 (relating to motions).
 - (17) 1 Pa. Code § 35.188(b) (relating to restrictions on duties and activities).
 - (18) 1 Pa. Code § 35.190 (relating to appeals to agency head from rulings of presiding officers).
 - (19) 1 Pa. Code §§ 35.201—35.214 (relating to proposed reports generally).
 - (20) 1 Pa. Code § 35.221 (relating to briefs and oral argument in absence of proposed report).
 - (21) 1 Pa. Code §§ 35.231—35.232 (relating to reopening of record).
 - (22) 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration).
- (c) This section supersedes 1 Pa. Code § 31.1 (relating to scope of part).

Source

The provisions of this § 42.1 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; corrected August 20, 1976, effective August 14, 1976, 6 Pa.B. 1985; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial pages (38302) and (86989).

§ 42.2. Construction.

(a) This chapter shall be construed liberally for the accomplishment of the purposes of the act and the Fair Educational Opportunities Act.

(b) Subsection (a) supplements 1 Pa. Code § 31.2 (relating to liberal construction).

Source

The provisions of this § 42.2 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (86989).

§ 42.3. Definitions.

(a) The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Pennsylvania Human Relations Act (43 P. S. §§ 951—963).

Adult—An individual who is 18 years of age or older.

Chairperson—The Chairperson of the Commission.

Commission—The Human Relations Commission of the Commonwealth, its Commissioners, staff and counsel.

Complaint—A complaint as required under the act, the Fair Educational Opportunities Act or this chapter.

Fair Educational Opportunities Act—The Pennsylvania Fair Educational Opportunities Act (24 P. S. §§ 5001—5010).

Fair Housing Act—The Fair Housing Act of 1968 (42 U.S.C.A. §§ 3601—3619).

Motions commissioner—A commissioner designated under § 42.131 (relating to motions commissioners and motions examiners).

Motions examiner—An examiner designated under § 42.131.

Office of the agency—The appropriate Regional Office of the Commission.

Party—The complainant or the respondent.

Staff—The term includes, but is not limited to, the Executive Director and deputy directors, regional directors and other personnel the Commission may appoint. Duties of the staff include, but are not limited to, the following:

(i) Receiving, initiating, amending, processing, serving and investigating formal and informal complaints.

(ii) Conducting conferences, conciliations and other meetings for which the regulations and the applicable statutes provide.

(iii) Conducting other investigations for which the applicable statutes provide.

(iv) Determining whether or not probable cause exists to credit the allegations of the complaint.

(v) Advising and educating the public and issuing publications, notices, recommendations and guidelines to effectuate the policies and purposes of the applicable statutes.

Staff counsel—The staff of attorneys designated by the Commission to give legal assistance to complainants appearing before the Commission. The term does not include the permanent hearing examiners and other attorneys desig-

nated by the Commission to render legal advice to Commissioners on complaints before the Commissioners for public hearing.

(b) Subsection (a) supplements 1 Pa. Code § 31.3 (relating to definitions) and the definition of “staff counsel” supersedes 1 Pa. Code § 31.3.

Source

The provisions of this § 42.3 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909; amended December 17, 1993, effective December 18, 1993, 23 Pa.B. 5897. Immediately preceding text appears at serial pages (156347) to (156348).

Notes of Decisions

Commission

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 conference 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 the company of its due process rights. *George Clay Steam Fire Engine and Hose Co. v. Human Relations Commission*, 639 A.2d 893 (Pa. Cmwlth. 1994); appeal denied 656 A.2d 120 (Pa. 1995).

Subchapter B. GENERAL REQUIREMENTS

- Sec.
42.11. [Reserved].
42.12. Caption.
42.13. Number of copies.
42.14. Time of filing.

§ 42.11. [Reserved].

Source

The provisions of this § 42.11 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; reserved April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (86990).

Notes of Decisions

A claim filed with the EEOC and PHRC 223 days after termination is a commencement of proceedings under State or local law if the discrimination occurs in a deferral State serving as the State equivalent of the EEOC and triggers the 300-day statute of limitations under 42 U.S.C. § 2000—5(e), even though the State claim is dismissed for failure to comply with the 90-day statute of limitations contained in subsection (a); the court also noted that 16 Pa. Code § 42.11(c) provides that a complaint is deemed filed when received by the PHRC. *Shaffer v. National Can Corp.*, 565 F. Supp. 909 (E.D. Pa. 1983).

Commission action may be involved by a verified complaint transmitted from a federal agency, since nothing requires that a complainant file in person, the exclusive action provision of the Pennsylvania Human Relations Act, 43 P. S. § 962(b), only bars those who have previously sought relief under the laws of the Commonwealth rather than a federal remedy, and 16 Pa. Code § 42.11 preserves

commission discretion to entertain complaints in noncompliance with 16 Pa. Code § 42.31 (relating to commencement of proceedings by complaint under the acts). *Lukus v. Westinghouse Electric Corp.* 419 A.2d 431 (Pa. Super. 1980).

§ 42.12. Caption.

(a) Filings in any proceeding 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 “Commonwealth of Pennsylvania—Governor’s Office—Pennsylvania Human Relations Commission.”

(b) Subsection (a) supplements 1 Pa. Code § 31.5(a) (relating to communications and filings generally) and 1 Pa. Code § 33.1 (relating to title).

Source

The provisions of this § 42.12 adopted April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909.

Cross References

This section cited in 16 Pa. Code § 42.34 (relating to motions).

§ 42.13. Number of copies.

(a) Except as otherwise directed or permitted by the Commission, and except as provided by § 42.121 (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.

(b) Subsection (a) supersedes 1 Pa. Code § 33.15 (relating to number of copies).

Source

The provisions of this § 42.13 adopted April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909.

§ 42.14. Time of filing.

(a) The complaint shall be filed within 180 days from the occurrence of the alleged unlawful discriminatory practice, but the computation of the 180 days does not include a period of time which is excludable as a result of waiver, estoppel or equitable tolling. If the alleged unlawful discriminatory practice is of a continuing nature, the date of the occurrence of the practice will be deemed to be any date subsequent to the occurrence of the practice up to and including the date upon which the unlawful discriminatory practice shall have ceased.

(b) A complaint filed under the Fair Educational Opportunities Act shall be filed as specified in subsection (a) except that the complaint shall be filed within 6 months from the date of the occurrence of the alleged unfair educational practice.

(c) A complaint will be deemed filed on the date received by the Commission.

(d) Complaints that are not verified or that do not otherwise fully conform with a requirement of a complaint before the Commission will be considered filed on the date received by the Commission but may be quashed, as justice may require, if the nonconformity is not remedied by amendment or otherwise within

a reasonable time. Prior to the quashing of a complaint, the Commission will notify the complainant, in writing, and will provide an opportunity to explain why the complaint should not be quashed under this section.

(e) Subsections (a)—(d) supersede 1 Pa. Code § 31.11 (relating to timely filing required).

Source

The provisions of this § 42.14 adopted April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909; amended December 17, 1993, effective December 18, 1993, 23 Pa.B. 5897. Immediately preceding text appears at serial pages (158601) to (158602).

Notes of Decisions

Tolling

The employee's filing of her charge of discrimination more than 2 1/2 years after the last alleged discriminatory act was timely, because the filing of an earlier complaint by a coemployee tolled the statute of limitations even though the district court ultimately denied class certification; the commencement of a class action suspends the applicable statute as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action. *Cortes v. R. I. Enterprises, Inc.* 95 F. Supp. 2d 255 (M. D. Pa. 2000).

Subchapter C. [Reserved]

§ 42.21. [Reserved].

Source

The provisions of this § 42.21 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; reserved April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (60566).

Subchapter D. PLEADINGS AND OTHER PRELIMINARY MATTERS

Sec.

- 42.31. Commencement of proceedings by complaint and answer under the acts.
- 42.32. Contents of complaint and answer.
- 42.33. Effect of answer and new matter; effect of failure to file answer; rule to show cause.
- 42.34. Motions.
- 42.35. Amendment of complaint or answer.
- 42.36. Complaints seeking relief for persons other than the named complainant.

§ 42.31. Commencement of proceedings by complaint and answer under the act.

(a) A proceeding may be commenced by filing a verified complaint with the Commission. The Commission will, thereafter, enter the complaint on its official docket and serve the complaint by sending a copy to each named respondent, within 30 days of the date of the entry of the complaint on its docket; except that if the complaint contains one or more allegations under section 5(h) or 5.3 of the act (43 P. S. §§ 955(h) and 955.3), involving unlawful housing discrimination cognizable under the Fair Housing Act, or under section 5(d) or (e) of the act, if the underlying or supporting action involves unlawful housing discrimination cognizable under the Fair Housing Act, the complainant shall be advised of the time limits for processing such a complaint, and of the choice of forums as set forth in § 42.101(c) (relating to hearings), and the complaint shall be served within 10 days after the date of filing, along with a notice to the respondent of the respondent's rights and duties.

(b) The Attorney General or the Commission, by the Executive Director or by another person the Commission may authorize, may commence a proceeding by filing a complaint at any office of the Commission.

(c) 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, including those complaints containing one or more allegations under section 5(h) or 5.3 of the act, involving unlawful housing discrimination cognizable under the Fair Housing Act, or under section 5(d) or (e) of the act, if the underlying or supporting action involves unlawful housing discrimination cognizable under the Fair Housing Act. 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 named complainant, and where an attorney has entered an appearance on behalf of a named complainant, shall also serve a copy on the attorney.

(d) 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 § 42.33(c) and (d) (relating to effect of answer and new matter; effect of failure to file answer; rule to show cause).

(e) Subsections (a)—(d) supplement 1 Pa. Code § 35.9 (relating to formal complaints generally).

Source

The provisions of this § 42.31 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; reserved April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909; amended December 17, 1993, effective December 18, 1993, 23 Pa.B. 5897. Immediately preceding text appears at serial page (156351).

Notes of Decisions

Commission action may be invoked by a verified complaint transmitted from a federal agency, since nothing requires that a complainant file in person, the exclusive action provision of the Pennsylvania Human Relations Act (43 P. S. § 962(b)) only bars those who have previously sought relief under the laws of the Commonwealth rather than a Federal remedy, and 16 Pa. Code § 42.11 (relating to time of filing) preserves Commission discretion to entertain complaints in noncompliance with 16 Pa. Code § 42.31. *Lukus v. Westinghouse Electric Corp.*, 419 A.2d 431 (Pa. Super. 1980).

Cross References

This section cited in 16 Pa. Code § 42.33 (relating to effect of answer and new matter; effect of failure to file answer; rule to show cause).

§ 42.32. 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, the Commission or the Attorney General, who will be designated as the complainant.

(2) The name and address of the person, labor organization, employment agency or educational institution alleged to have committed the practice complained of, who will be designated as the respondent.

(3) The particulars of the unlawful discriminatory practice complained of.

(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. § 4904 (relating to unsworn falsification to authorities).

(5) Other information as may be required by the Commission.

(b) The answer to a complaint shall be in writing and verified. The verification shall be as specified in subsection (a)(4). The answer shall be so drawn as to fully and completely advise the parties and the Commission as to the nature of all defenses, shall admit or deny with specificity each averment of fact in the complaint, and shall state clearly and concisely the facts and matters of law relied upon.

(c) Subsection (a) supersedes 1 Pa. Code § 35.10 (relating to form and contents of formal complaints), and subsection (b) supersedes 1 Pa. Code § 35.35 (relating to answers to complaints and petitions).

Source

The provisions of this § 42.32 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (60567).

§ 42.33. Effect of answer and new matter; effect of failure to file answer; rule to show cause.

(a) An allegation of new matter contained in the answer, including the alleged facts underlying defenses raised, will be deemed denied without the necessity of a reply.

(b) 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.

(c) If the Commission staff determines that a complaint sets forth sufficient facts to raise an inference of unlawful discrimination under the act, and the respondent has failed to deny these facts in an answer, or has failed to file a timely answer, the staff may petition the Commission, through the appropriate motions commissioner or examiner, for a rule to show cause why this failure should not result in a finding of probable cause, and a judgment for the complainant on the issue of liability. If the Commission staff fails to file a petition within 10 days of the respondent's failure to file a timely answer, including extensions granted under § 42.31 (relating to commencement of proceedings by complaint and answer under the acts), the complainant may, thereafter, also file a petition. The Commissioner or examiner will then cause the rule to be issued and served on the respondent for a reply.

(d) Upon consideration of the petition, replies to the rule to show cause, and other information as the motions commissioner or examiner may deem necessary or appropriate, the commissioner or examiner will do one of the following:

(1) For good cause, permit an otherwise untimely answer, which has been filed and is well pled, to stand, and return the case to the staff for further appropriate action.

(2) Order an answer to be filed by a date certain, with the failure to file resulting in an appropriate order or recommendation under paragraph (3) or (4).

(3) Return the case to the staff for further appropriate action, if the complaint does not appear to set forth sufficient facts to raise an inference of unlawful discrimination.

(4) Recommend to the Commission a finding of probable cause, and the entry of a judgment for the complainant on the issue of liability, to be followed by a public hearing on the issue of damages if conciliation efforts fail.

(e) Subsections (a)—(d) supersede 1 Pa. Code § 35.35 (relating to answers to complaints and petitions).

Source

The provisions of this § 42.33 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial pages (60567) to (60568).

Cross References

This section cited in 16 Pa. Code § 42.31 (relating to commencement of proceedings by complaint and answer under the acts).

§ 42.34. 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, include a proposed order and comply with § 42.12 (relating to caption).

(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) shall be in writing. 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) Written motions and replies thereto shall be served by the submitting party upon all parties to the proceeding.

(e) 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.

(f) Subsections (a)—(c) and (e) supplement 1 Pa. Code § 35.54 (relating to motions as to complaint).

(g) Subsection (d) supplements 1 Pa. Code §§ 33.31—33.37 (relating to service of documents).

Source

The provisions of this § 42.34 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial pages (60568) and (84181).

Cross References

This section cited in 16 Pa. Code § 42.131 (relating to Motions Commissioners and Motions Examiners).

§ 42.35. 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 Commissioners, 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 § 42.36(a) (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.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.48(b) (relating to amendment of pleadings generally).

Source

The provisions of this § 42.35 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; corrected August 20, 1976, effective August 14, 1976, 6 Pa.B. 1985; amended October 28, 1983, effective October 29, 1983, 13 Pa.B. 3283; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (84181).

§ 42.36. 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.

Source

The provisions of this § 42.36 adopted April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909.

Cross References

This section cited in 16 Pa. Code § 42.35 (relating to amendment of complaint or answer).

Subchapter E. DISCOVERY DURING INVESTIGATION AND IN PREPARATION FOR PUBLIC HEARING

- Sec.
42.41. Initiation of investigation.
42.42. Authorization to employ discovery measures.
42.43. Oral interviews and other investigations.
42.44. Interrogatories.
42.45. Answers to interrogatories.

- 42.48. Issuance of subpoenas.
- 42.49. Service of subpoenas.
- 42.50. Enforcement of subpoenas.
- 42.51. Depositions.
- 42.53. Use of depositions at hearings.
- 42.54. Production of documents and things and entry for inspection and other purposes.
- 42.55. Requests for admissions.
- 42.56. Protective orders.
- 42.57. Scope of discovery of the Commission's records, documents and other information relating to a complaint.
- 42.58. Exemptions from discovery.

Cross References

This subchapter cited in 16 Pa. Code § 42.131 (relating to Motions Commissioners and Motions Examiners).

§ 42.41. Initiation of investigation.

(a) Upon filing of a complaint or when 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) When a complaint contains one or more allegations under section 5(h) or 5.3 of the act (43 P. S. §§ 955(h) and 955.3), involving unlawful housing discrimination cognizable under the Fair Housing Act, or under section 5(d) or (e) of the act, if the underlying or supporting action involves unlawful housing discrimination cognizable under the Fair Housing Act, the investigation concerning those allegations shall be commenced within 30 days and completed within 100 days after the filing of the complaint, unless it is impracticable to do so, in which case the Commission will notify the parties in writing of the reasons for not doing so.

(c) 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 in this subchapter.

Source

The provisions of this § 42.41 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; corrected August 20, 1976, effective August 14, 1976, 6 Pa.B. 1985; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909; amended December 17, 1993, effective December 18, 1993, 23 Pa.B. 5897. Immediately preceding text appears at serial page (156356).

Notes of Decisions

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 conference 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 the company of its due process rights. *George Clay Steam Fire Engine and Hose Co. v. Human Relations Commission*, 639 A.2d 893 (Pa. Cmwlth. 1994); appeal denied 656 A.2d 120 (Pa. 1995).

§ 42.42. Authorization to employ discovery measures.

(a) Prior to the approval of a public hearing on the merits of a complaint, and except as may otherwise be permitted by a preliminary hearing officer as necessary or 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 he is not represented by staff counsel under § 42.106 (relating to attorney or designated agent of complainant; forms) 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.

(d) Subsection (a) supersedes 1 Pa. Code §§ 35.142 and 35.145 (relating to subpoenas; and depositions).

(e) Subsection (b) supplements 1 Pa. Code §§ 35.142—35.152 (relating to subpoenas; and depositions).

Source

The provisions of this § 42.42 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended July 24, 1981, effective July 25, 1981, 11 Pa.B. 2608; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (84182).

Cross References

This section cited in 16 Pa. Code § 42.44 (relating to interrogatories); 16 Pa. Code § 42.48 (relating to issuance of subpoenas); 16 Pa. Code § 42.51 (relating to depositions); and 16 Pa. Code § 42.54 (relating to production of documents and things and entry for inspection and other purposes).

§ 42.43. Oral interviews and other investigations.

(a) The 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) The Commission staff may require any person to make available information, in the form of documents, records, files or other materials for inspection, copying or photographing during the Commission investigation.

Source

The provisions of this § 42.43 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; corrected August 20, 1976, effective August 14, 1976, 6 Pa.B. 1985; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (84182).

§ 42.44. Interrogatories.

(a) As authorized in § 42.42 (relating to authorization to employ discovery measures), written interrogatories may be served upon any person 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 an officer or agent who is authorized to furnish the requested information.

(b) Supplemental interrogatories or sets of interrogatories may be served.

Source

The provisions of this § 42.44 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (30111).

§ 42.45. Answers to interrogatories.

Answers to interrogatories may be filed. If filed, they shall conform to the following rules:

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

Source

The provisions of this § 42.45 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (30111).

§ 42.48. Issuance of subpoenas.

(a) As authorized in § 42.42 (relating to authorization to employ discovery measures), 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 Commissioner or officer may thereafter sign and cause the subpoena to be issued for service.

(b) As authorized in § 42.42, 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 Commissioner or officer may thereafter sign and cause the subpoena to be issued for service.

(c) A 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 Commissioner or officer, who will rule thereon.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.142(a) (relating to subpoenas).

Source

The provisions of this § 42.48 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (30112).

Cross References

This section cited in 16 Pa. Code § 42.51 (relating to depositions); and 16 Pa. Code § 42.103 (relating to subpoena for a hearing upon the merits).

§ 42.49. Service of subpoena.

(a) A subpoena may be served by any adult member of the staff not a party to the proceeding, or by another adult, 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 designated 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.

(e) Subsections (a)—(d) supersede 1 Pa. Code § 35.142(b) (relating to subpoenas).

Source

The provisions of this § 42.49 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial pages (30112) and (84183).

Cross References

This section cited in 16 Pa. Code § 42.103 (relating to subpoena for a hearing upon the merits).

§ 42.50. Enforcement of subpoenas.

A subpoena issued by the Commission, at the request of the Commission staff, may be enforced by staff counsel by petition to the appropriate court or district attorney, or both. Any other subpoena issued by the Commission may be enforced by the party requesting the subpoena by petition to the appropriate court.

Source

The provisions of this § 42.50 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (84183).

Cross References

This section cited in 16 Pa. Code § 42.51 (relating to depositions); 16 Pa. Code § 42.54 (relating to production of documents and things and entry for inspection and other purposes); and 16 Pa. Code § 42.103 (relating to subpoena for a hearing upon the merits).

§ 42.51. Depositions.

(a) As authorized in § 42.42 (relating to authorization to employ discovery measures), application for permission to take a deposition may be made to a motions commissioner or motions examiner as provided in 1 Pa. Code § 35.146 (relating to notice and application). If the application so warrants, the Commissioner or examiner will issue and serve the authorization as provided in 1 Pa. Code § 35.147 (relating to authorization of taking deposition).

(b) Attendance of the person to be examined by deposition may be compelled by the use of a subpoena as provided in §§ 42.48 and 42.50 (relating to issuance of subpoenas; and enforcement of subpoenas).

(c) If a deponent to be examined at a deposition refuses to be sworn or to answer a question, the deposition shall be completed on other matters or adjourned, as the proponent of the swearing or question may prefer. Thereafter, upon reasonable notice and opportunity for reply to all persons affected thereby, the proponent may apply to a motions commissioner or examiner for an order compelling the witness to be sworn or to answer a question, in whole or in part, which order may be enforced as with a subpoena under § 42.50.

(d) Subsection (a) supplements 1 Pa. Code §§ 35.145—35.150 (relating to depositions).

Source

The provisions of this § 42.51 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (84183).

§ 42.53. 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 taking of 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 any one who at the time of taking 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 any 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.

(e) Subsections (a)—(d) supersede 1 Pa. Code § 35.151 (relating to status of deposition as part of record).

Source

The provisions of this § 42.53 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; corrected August 20, 1976, effective August 14, 1976, 6 Pa.B. 1985; amended October 28, 1983, effective October 29, 1983, 13 Pa.B. 3283; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (84184).

§ 42.54. Production of documents and things and entry for inspection and other purposes.

(a) As authorized in § 42.42 (relating to authorization to employ discovery measures), 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 usable 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 § 42.56 (relating to protective orders).

(c) If the application so warrants, the motions commissioner or motions examiner will issue and serve 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 § 42.50 (relating to enforcement of subpoenas).

Source

The provisions of this § 42.54 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended October 28, 1983, effective October 29, 1983, 13 Pa.B. 3283; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial pages (84184) to (84185).

§ 42.55. Requests for admissions.

(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.

Source

The provisions of this § 42.55 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended October 28, 1983, effective October 29, 1983, 13 Pa.B. 3283; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (84185).

§ 42.56. 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 to protect 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.

Source

The provisions of this § 42.56 adopted April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909.

Cross References

This section cited in 16 Pa. Code § 42.54 (relating to production of documents and things and entry for inspection and other purposes).

§ 42.57. 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:

- (1) The staff person has direct personal knowledge of evidence relevant to the proceeding other than evidence gathered as a result of investigation.
- (2) For other reasons which shall be set forth with particularity, justice requires that the petition be granted.
- (3) Discovery has revealed that the staff person will be called as a witness.

Source

The provisions of this § 42.57 adopted April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909.

§ 42.58. 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 or 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 staff's 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.

Source

The provisions of this § 42.58 adopted April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909.

Subchapter F. DISMISSAL OF COMPLAINTS AND PRELIMINARY HEARING CONSIDERATION

Sec.

- 42.61. Dismissal of complaints.
- 42.62. Request for a preliminary hearing.
- 42.63. Action on request for a preliminary hearing.
- 42.64. Preliminary hearing officer.
- 42.65. Conduct of preliminary hearing.
- 42.66. Results of preliminary hearing.
- 42.67. Reopening costs after final disposition.

§ 42.61. Dismissal of complaints.

(a) If, after investigation, the staff determines that no probable cause exists to credit the allegations of the complaint or if, during or after investigation, the staff determines that the case is untimely filed, that the case is moot, that the Commission lacks jurisdiction, that the parties have reached an agreement adjusting the complaint or that another reason exists which legally justifies the dismissal of the complaint, the staff will make a finding reflecting that determination.

(b) A staff finding will be reported to the Executive Director, who may close the case or take other action as may be deemed necessary or appropriate. The Executive Director may appoint, in writing, another staff person who is authorized to close cases in the Executive Director's absence.

(c) Whenever a case is closed, the Commission will notify all parties in writing of the following:

- (1) The closing, together with a statement of the reason therefor.
- (2) The right of the complainant to request a preliminary hearing in accordance with § 42.62 (relating to request for a preliminary hearing).
- (3) 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. The duty of the complainant to serve a copy of the court complaint on the Commission, in an action so brought, at the same time the complaint is filed in court.

Source

The provisions of this § 42.61 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended July 24, 1981, effective July 25, 1981, 11 Pa.B. 2608; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909; amended December 17, 1993, effective December 18, 1993, 23 Pa.B. 5897. Immediately preceding text appears at serial pages (156366) to (156367).

Notes of Decisions

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 conference 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 the company of its due process rights. *George Clay Steam Fire Engine and Hose Co. v. Human Relations Commission*, 639 A.2d 893 (Pa. Cmwlth. 1994); appeal denied 656 A.2d 120 (Pa. 1995).

Where a complainant has requested reconsideration of a determination in accordance with 16 Pa. Code § 42.62(c) and the reconsideration results in a finding of probable cause which is later changed to a finding of no probable cause, further resulting in dismissal of the case on the same grounds that had been given originally and a notification under 16 Pa. Code § 42.61(c) of the right to request reconsideration, the provision of 16 Pa. Code § 42.62(b) which states that "the request for reconsideration of the closing of a complaint may be made only once for each ground of closing" allows the Court of Common Pleas to take jurisdiction on appeal from the Human Relation Commission ruling even though complainant did not request reconsideration of the second denial under 16 Pa. Code § 42.61(c). *Baker v. Human Relations Commission*, 462 A.2d 881 (Pa. Cmwlth. 1983); order affirmed as modified 489 A.2d 1354 (Pa. 1985).

Cross References

This section cited in 16 Pa. Code § 42.62 (relating to request for a preliminary hearing); and 16 Pa. Code § 42.76 (relating to rescission of finding of probable cause).

§ 42.62. Request for a preliminary hearing.

(a) If a case is closed under § 42.61 (relating to dismissal of complaints), the complainant may file a request for a preliminary hearing within 10 days of receipt of the notice of the closing of the complaint.

(b) The request for a preliminary hearing may be made only once for each ground of closing.

(c) A request for a preliminary hearing shall be in writing, state specifically all grounds on which the complainant disputes the Commission's stated reasons for closing the case, and may contain new evidence not previously considered by the Commission.

(d) The Commission will forward a copy of the request for a preliminary hearing and material in support thereof to the respondent, who shall have the right to respond thereto within 10 days of receipt of the copy.

Source

The provisions of this § 42.62 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended July 24, 1981, effective July 25, 1981, 11 Pa.B. 2608; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial pages (84186) and (117025).

Notes of Decisions

Where a complainant has requested reconsideration of a determination in accordance with 16 Pa. Code § 42.62(c) and the reconsideration results in a finding of probable cause which is later changed to a finding of no probable cause, further resulting in dismissal of the case on the same grounds that had been given originally and a notification under 16 Pa. Code § 42.61(c) of the right to request reconsideration, the provision of 16 Pa. Code § 42.62(b) which states that “the request for reconsideration of the closing of a complaint may be made only once for each ground of closing” allows the Court of Common Pleas to take jurisdiction on appeal from the PHRC ruling even though complainant did not request reconsideration of the second denial under 16 Pa. Code § 42.61(c). *Baker v. Human Relations Commission*, 462 A.2d 881 (Pa. Cmwlth. 1983).

If a petitioner requests a preliminary hearing to determine probable cause for his complaint, but fails to state therein the grounds relied on and fails to respond to a request by the Commission to specify the grounds relied on, he has failed to exhaust his administrative remedies and may not ask a court to act in the matter. *Richardson v. Human Relations Commission*, 415 A.2d 1282 (Pa. Cmwlth. 1980).

Cross References

This section cited in 16 Pa. Code § 42.61 (relating to dismissal of complaints); and 16 Pa. Code § 42.76 (relating to rescission of finding of probable cause).

§ 42.63. Action on request for a preliminary hearing.

(a) A request for a preliminary hearing will be referred to a staff counsel who will review the file, consider new evidence, secure new information as may be necessary or appropriate, and who shall recommend one of the following:

(1) That the request be denied.

(2) That probable cause exists to credit the allegations of the complaint, on the record currently before staff counsel, without the need for a preliminary hearing.

(3) That the case should be reopened for further investigation or other appropriate action, without the need for a preliminary hearing.

(4) That a preliminary hearing is necessary or appropriate under § 42.65(a) (relating to conduct of preliminary hearing).

(b) If the staff counsel recommends that a request for a preliminary hearing be granted, and that a preliminary hearing be convened under subsection (a)(4), the recommendation shall be made and reported to the Executive Director, who may grant the request and convene a preliminary hearing, or take other action as the Executive Director may deem necessary or appropriate.

(c) If the staff counsel recommends that a request for a preliminary hearing be granted, because probable cause exists under subsection (a)(2), the recommendation shall be made and reported to the Executive Director, who may grant the request, reopen the case, and approve a finding of probable cause, or take other action as the Executive Director deems necessary or appropriate. If a finding of probable cause is made, the case will thereafter proceed in accordance with § 42.71 (relating to finding of probable cause).

(d) If the staff counsel recommends that a request for a preliminary hearing be granted, and that further investigation or other action take place under subsec-

tion (a)(3), the recommendation will be made and reported to the Executive Director, who may grant the request, reopen the case, and institute further investigation, or take other action the Executive Director deems necessary or appropriate.

(e) If the staff counsel recommends that a request for a preliminary hearing be denied, or if the Executive Director determines that a recommendation to grant a request for a preliminary hearing should be denied under subsection (b), (c) or (d), the recommendation or determination will be made and reported to the Commissioners, who may grant or deny the request for a preliminary hearing or take other action as they may deem necessary or appropriate.

(f) The Commission will notify all parties, in writing, of its action in either granting or denying the request for a preliminary hearing.

Source

The provisions of this § 42.63 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended July 24, 1981, effective July 25, 1981, 11 Pa.B. 2608; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial pages (117025) to (117026).

Notes of Decisions

Preliminary Hearing

Under the terms of 16 Pa. Code § 42.63(a) (relating to reconsideration of dismissal), the request for reconsideration is not intended to entail the participation of the complainant, but is an entirely internal matter. Any preliminary hearing held pursuant to such a request must comply with the mandates of the Administrative Agency Law, 2 Pa.C.S. §§ 501—508 and 701—704. *Carney v. Human Relations Commission*, 404 A.2d 760 (Pa. Cmwlth. 1979); superseded by statute/rule as stated in *Espenshade v. Pa. State University* 556 F. Supp 131 (1983).

Remand

In an original action in *mandamus*, remand was proper where record was not adequate to show Commission had exercised discretion in accordance with statute and Commission's own rules in denying a complainant's request for preliminary hearing after a finding of no probable cause. *Baker v. Human Relations Commission*, 489 A.2d 1354 (Pa. 1985).

Executive director of Pennsylvania Human Relations Commission is immune from liability under civil rights statute for performing his discretionary duty of finding no probable cause with respect to employment discrimination claims. *Espenshade v. Pennsylvania State University*, 556 F.Supp. 131 (M.D. Pa. 1983).

§ 42.64. Preliminary hearing officer.

(a) Whenever a preliminary hearing is to be convened under this subchapter, the Executive Director will designate a preliminary hearing officer before whom the preliminary hearing will be conducted.

(b) The preliminary hearing officer will be a Commission counsel, and have all the authority vested in hearing commissioners and permanent hearing examiners under § 42.111 (relating to powers and duties of hearing commissioners and permanent hearing examiners) and in presiding officers under 1 Pa. Code § 35.187 (relating to authority delegated to presiding officers).

Source

The provisions of this § 42.64 adopted April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909.

Cross References

This section cited in 16 Pa. Code § 42.131 (relating to Motions Commissioners and Motions Examiners).

§ 42.65. Conduct of preliminary hearing.

(a) A preliminary hearing may be convened under this subchapter to determine probable cause for crediting the allegations of the complaint, to determine whether a case should be reopened under § 42.67 (relating to reopening cases after final disposition), or whenever the Commission deems a hearing necessary or appropriate.

(b) The testimony taken at a preliminary hearing under this subchapter will be transcribed and under oath, and the parties and the Commission staff counsel will be afforded the opportunity to submit briefs on the issues.

Source

The provisions of this § 42.65 adopted April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909.

Cross References

This section cited in 16 Pa. Code § 42.63 (relating to action on request for a preliminary hearing).

§ 42.66. Results of preliminary hearing.

(a) If, after a preliminary hearing under this subchapter, the preliminary hearing officer finds that probable cause exists to credit the allegations of the complaint, the preliminary hearing officer will reopen the case and make a finding of probable cause.

(b) If, subsequent to the commencement of a preliminary hearing under this subchapter, the preliminary hearing officer finds that further investigation or other action by the Commission is necessary or appropriate, the preliminary hearing officer will reopen the case, direct that further investigation or other action take place, and may retain jurisdiction over the case as is deemed necessary or appropriate.

(c) If, after a preliminary hearing under § 42.67 (relating to reopening cases after final disposition), the preliminary hearing officer finds that justice requires that the case be reopened, the finding will be made and reported to the Commissioners, who may reopen the case or take other action as they deem necessary or appropriate.

(d) If, after a preliminary hearing under this subchapter, the preliminary hearing officer finds that probable cause does not exist to credit the allegations of the complaint, or that justice does not require that the case be reopened under

§ 42.67, the finding will be made and reported to the Commissioners, who may reaffirm the case closing or take other action as they deem necessary or appropriate.

(e) The Commission will notify all parties, in writing, of the results of any preliminary hearing held under this subchapter.

Source

The provisions of this § 42.66 adopted April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909.

§ 42.67. Reopening 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.

Source

The provisions of this § 42.67 adopted April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909.

Cross References

This section cited in 16 Pa. Code § 42.65 (relating to conduct of preliminary hearing); and 16 Pa. Code § 42.66 (relating to results of preliminary hearing).

**Subchapter G. FINDING OF PROBABLE CAUSE AND
PREHEARING CONCILIATION**

Sec.	
42.71.	Finding of probable cause.
42.72.	Conciliation and adjustment.
42.73.	Reconsideration of adjustment.
42.74.	Notice of right to bring an action in the court of common pleas.
42.75.	Conciliation meetings and prehearing conferences.
42.76.	Rescission of finding of probable cause.

§ 42.71. Finding of probable cause and attempts at conciliation after service of the complaint.

(a) If, after a preliminary investigation, the Commission determines that probable cause exists to credit the allegations of the complaint, a finding of probable cause will be made.

(b) Whether or not a finding of probable cause is made, the Commission will, after service of the complaint, encourage a voluntary and informed predetermination settlement between the parties. If a finding of probable cause is made, the Commission will endeavor to eliminate the unlawful discriminatory practice by conference, conciliation and persuasion.

Source

The provisions of this § 42.71 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; corrected August 20, 1976, effective August 14, 1976, 6 Pa.B. 1985; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909; amended December 17, 1993, effective December 18, 1993, 23 Pa.B. 5897. Immediately preceding text appears at serial page (156372).

Notes of Decisions

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 conference 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 the company of its due process rights. *George Clay Steam Fire Engine and Hose Co. v. Human Relations Commission*, 639 A.2d 893 (Pa. Cmwlth. 1994); appeal denied 656 A.2d 120 (Pa. 1995).

Cross References

This section cited in 16 Pa. Code § 42.63 (relating to action on request for a preliminary hearing).

§ 42.72. 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 or other predetermination settlement agreement may be entered as a consent order by the Commissioners if all parties consent to the entry and will 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 Commissioners but not to the complainant, the Commission may close the case and the complainant may proceed in the appropriate court of common pleas under section 12(c) of the act (42 P. S. § 962(c)).

Source

The provisions of this § 42.72 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909; amended December 17, 1993, effective December 18, 1993, 23 Pa.B. 5897. Immediately preceding text appears at serial page (156372).

§ 42.73. 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.

Source

The provisions of this § 42.73 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (123150).

Notes of Decisions

Judicial Review Appropriate

The court had the authority to review an employer's compliance with a settlement agreement entered into pursuant to employee's equal employment and opportunity complaint. *News-Chronicle Co. v. Human Relations*, 672 A.2d 400 (Pa. Cmwlth. 1996).

Court could not exercise jurisdiction over employer's request for Writ of Prohibition against Human Relations Commission investigation and exercise of jurisdiction over complaint brought under this section, where Commission had issued interlocutory order indicating necessity of preliminary hearing to determine procedural issues and for analysis of original settlement agreement. *McGraw-Edison Co. v. Human Relations Commission*, 529 A.2d 81 (Pa. Cmwlth. 1987).

§ 42.74. Notice of right to bring an action in the court of common pleas.

Upon the dismissal of a complaint, the denial of a request for reconsideration, the dismissal of a complaint after reconsideration or the expiration of a statutory period in the act or the Fair Educational Opportunities Act, if 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, in accordance with section 12(c) of the act (43 P. S. § 962(c)), and of the duty of the complainant to serve a copy of the court complaint on the Commission, in any action so brought, at the same time the complaint is filed in court.

Source

The provisions of this § 42.74 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909; amended December 17, 1993, effective December 18, 1993, 23 Pa.B. 5897. Immediately preceding text appears at serial page (156373).

§ 42.75. Conciliation meetings and prehearing conferences.

(a) Conciliation meetings will be governed by 1 Pa. Code § 35.111 (relating to conferences to adjust, settle or expedite proceedings), except that the meetings need not be held before the agency head or a presiding officer, but will be conducted by Commission staff.

(b) Prehearing orders and conferences will be governed by 1 Pa. Code §§ 35.112—35.120 except that a prehearing conference may be conducted before a Commissioner or a person authorized by the Commission to serve as a presiding officer.

(c) Subsection (a) supersedes 1 Pa. Code § 35.111; subsections (b) and (c) supplement 1 Pa. Code §§ 35.112—35.120.

Source

The provisions of this § 42.75 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (123150).

§ 42.76. 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 § 42.61 (relating to dismissal of complaints). If the case is closed, the parties will be notified under § 42.61(c), which includes, but is not limited to, the right of the complainant to file a timely request for a preliminary hearing under § 42.62 (relating to request for a preliminary hearing).

Source

The provisions of this § 42.76 adopted April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909.

Subchapter H. [Reserved]

§ 42.81. [Reserved].

Source

The provisions of this § 42.81 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended July 24, 1981, effective July 25, 1981, 11 Pa.B. 2608; reserved April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (123151).

§ 42.82. [Reserved].

Source

The provisions of this § 42.82 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended October 28, 1983, effective October 29, 1983, 13 Pa.B. 3283; reserved April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial pages (123151) to (123152).

Cross References

This section cited in 16 Pa. Code § 42.131 (relating to Motions Commissioners and Motions Examiners).

§ 42.83. [Reserved].**Source**

The provisions of this § 42.83 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended October 28, 1983, effective October 29, 1983, 13 Pa.B. 3283; reserved April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial pages (123152) and (84193).

§ 42.84. [Reserved].**Source**

The provisions of this § 42.84 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; reserved April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (84193).

§ 42.85. [Reserved].**Source**

The provisions of this § 42.85 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; reserved April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (84193).

§ 42.86. [Reserved].**Source**

The provisions of this § 42.86 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; corrected August 20, 1976, effective August 14, 1976, 6 Pa.B. 1887; reserved April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (84194).

§ 42.88. [Reserved].**Source**

The provisions of this § 42.88 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; corrected August 20, 1976, effective August 14, 1976, 6 Pa.B. 1887; reserved April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (84194).

§ 42.89. [Reserved].**Source**

The provisions of this § 42.89 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended October 28, 1983, effective October 29, 1983, 13 Pa.B. 3283; reserved April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial pages (84194) to (84195).

§ 42.90. [Reserved].**Source**

The provisions of this § 42.90 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; reserved April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (84195).

§ 42.91. [Reserved].**Source**

The provisions of this § 42.91 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; reserved April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial pages (84195) to (84196).

§ 42.92. [Reserved].**Source**

The provisions of this § 42.92 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; corrected August 20, 1976, effective August 14, 1976, 6 Pa.B. 1985; reserved April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (84196).

§ 42.93. [Reserved].**Source**

The provisions of this § 42.93 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; reserved April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (84196).

§ 42.94. [Reserved].**Source**

The provisions of this § 42.94 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended July 24, 1981, effective July 25, 1981, 11 Pa.B. 2608; amended October 28, 1983, effective October 29, 1983, 13 Pa.B. 3283; reserved April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial pages (84196) to (84197).

Subchapter I. HEARINGS

- Sec.
42.101. Hearings.
42.102. Conduct of hearings.
42.103. Subpoenas for a hearing upon the merits.
42.104. [Reserved].
42.105. Failure to appear at hearing.
42.106. Attorney or designated agent of complainant; forms.
42.107. Supervision of designated agent of complainant; form.
42.108. Continued involvement by Commission staff.

Cross References

This subchapter cited in 16 Pa. Code § 42.121 (relating to briefs).

§ 42.101. Hearings.

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

(b) At any other time, the Commissioners may convene a hearing for one or more of the following:

- (1) Whenever a problem of racial discrimination arises.
- (2) To expedite the disposition of preliminary matters in an action before it.
- (3) When, in the judgment of the Commission, the circumstances so warrant.

(c) When a public hearing is to be convened under this section, the Chairperson will cause to be issued and served on the parties a written notice of the approval of the hearing, and will designate three Commissioners, or a permanent hearing examiner, before whom the hearing will be conducted. The three Commissioners, if appointed, will be called hearing commissioners.

(1) Whenever a notice of public hearing is issued under this section, involving a complaint containing one or more allegations under section 5(h) or 5.3 of the act (43 P. S. §§ 955(h) and 955.3), concerning unlawful housing discrimination cognizable under the Fair Housing Act, or under section 5(d) or (e) of the act, if the underlying or supporting action concerns unlawful housing discrimination cognizable under the Fair Housing Act, the notice shall also inform the parties of their right, under section 9(d.1) of the act (43 P. S. § 959(d.1)), to have the claims asserted in the complaint decided in a civil action brought under the original jurisdiction of the Commonwealth Court, of the duty of the parties to inform the Commission of the election, in writing, within 20 days after receipt of the notice, and that a failure to respond within this time shall result in the loss of the ability to proceed in Commonwealth Court under section 9(d.1) of the act.

(2) Whenever a valid election is made to proceed in Commonwealth Court, under section 9(d.1) of the act, the Commission will commence, within 20 days from receipt of the election, and maintain a civil action on behalf of the complainant; except that the Commission is not so required in a complaint in which the Attorney General is the complainant.

(d) A waiver of a hearing by the parties shall be in writing and properly executed.

(e) Subsections (a)—(d) supplement 1 Pa. Code § 35.121 (relating to initiation of hearings).

Source

The provisions of this § 42.101 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended July 24, 1981, effective July 25, 1981, 11 Pa.B. 2608; amended October 28, 1983, effective October 29, 1983, 13 Pa.B. 3233; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909; amended December 17, 1993, effective December 18, 1993, 23 Pa.B. 5897. Immediately preceding text appears at serial page (156377).

Cross References

This section cited in 16 Pa. Code § 42.111 (relating to powers and duties of hearing commissioners and permanent hearing examiners); and 16 Pa. Code § 42.131 (relating to Motions Commissioners and Motions Examiners).

§ 42.102. Conduct of hearings.

(a) In a hearing for which three Commissioners have been appointed to preside under the Fair Educational Opportunities Act or the act, that provision may be waived by the respondent and the complainant, in writing, in which event the hearing may be conducted before less than three members of the Commission acting as hearing commissioners.

(b) Testimony or evidence will not be offered or received at any hearing concerning offers or counteroffers of adjustment during efforts to conciliate an alleged unlawful discriminatory practice.

(c) An objection not made before the hearing commissioners or the permanent hearing examiner will be waived unless the failure or neglect to make the objection is excused for cause by the commissioners or the permanent hearing examiner.

(d) When objections to the admission or exclusion of evidence are made, the grounds relied upon shall be stated briefly. Formal exceptions are unnecessary and will not be taken to rulings thereon.

(e) Prepared expert testimony will be governed by 1 Pa. Code § 35.166 (relating to prepared expert testimony), except that the period of 20 days provided in 1 Pa. Code § 35.166(a) will be reduced to 10 days.

(f) Subsection (a) supplements 1 Pa. Code § 35.123 (relating to conduct of hearings); subsections (b)—(d) supplement 1 Pa. Code § 35.161 (relating to form and admissibility of evidence); and subsection (e) supersedes 1 Pa. Code § 35.166 (relating to prepared expert testimony).

Source

The provisions of this § 42.102 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended October 28, 1983, effective October 29, 1983, 13 Pa.B. 3233; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (84198).

§ 42.103. Subpoena for a hearing upon the merits.

(a) A subpoena issued for a hearing on the merits of a complaint may be requested, issued, served and enforced in the same manner as provided in §§ 42.48—42.50 (relating to issuance of subpoena; service of subpoena; and

enforcement of subpoenas), except as modified by § 41.131(d) (relating to Motions Commissioners and Motions Examiners).

(b) Subsection (a) supersedes subsection (a) of 1 Pa. Code § 35.142 (relating to subpoenas).

§ 42.104. [Reserved].

Source

The provisions of this § 42.104 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; reserved April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (84199).

§ 42.105. Failure to appear at hearing.

(a) If a party fails to appear at the time and place designated for the hearing, proof of notice of the hearing shall be entered on the record.

(b) Upon failure of a party to appear and entry of proof of notice on the record, and except where the hearing panel chairperson or permanent hearing examiner is able to determine that legitimate, unforeseen circumstances exist to justify a continuance, the hearing will proceed without the party.

(c) Subsections (a) and (b) supplement 1 Pa. Code § 35.124 (relating to appearance).

Source

The provisions of this § 42.105 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (84199).

§ 42.106. Attorney or designated agent of complainant; forms.

(a) The case in support of the complaint shall be presented at a public hearing under section 9(e) of the act (43 P. S. § 959(e)) by a staff counsel or agent of the Commission, by the complainant's attorney or by a designated agent of the complainant.

(b) An attorney or designated agent of complainant, who intends to present the case in support of the complaint at a public hearing under section 9(e) of the act, shall file a Notice of Intent and a Certificate of Authority in the form specified in subsections (d) and (e).

(c) The filing of a Notice of Intent and a Certificate of Authority will relieve the Commission of its duty to provide a staff counsel or agent of the Commission to present the case in support of the complaint. A Notice of Intent and a Certificate of Authority may be withdrawn and new ones substituted at any time. For good cause shown, and where the policies of the act will be effectuated thereby, the Commission may by order allow a Notice of Intent to be withdrawn, without substitution, and the Commission's duty to present the case to be reinstated.

(d) The Notice of Intent shall be in substantially the following form:

(Caption)

NOTICE OF INTENT

Notice is hereby given that A. B., attorney/designated agent of complainant, intends to present the case in support of the complaint at the public hearing in the above-captioned proceeding, as provided under § 9(e) of the Pennsylvania Human Relations Act.

/s/ _____
Attorney/designated agent

Address & Telephone No.

(e) The Certificate of Authority shall be in substantially the following form:

(Caption)

CERTIFICATE OF AUTHORITY

I, C. D., complainant in the above captioned proceeding, hereby certify that the above named attorney/designated agent has my express authority to present my case at public hearing and that I understand I am foregoing my right to be represented at such hearing by an attorney or agent of the Human Relations Commission.

I do/do not authorize that Commission staff counsel remain involved in this proceeding at public hearing.

/s/ _____
Complainant

Source

The provisions of this § 42.106 adopted April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909.

Cross References

This section cited in 16 Pa. Code § 42.42 (relating to authorization to employ discovery measures); 16 Pa. Code § 42.107 (relating to supervision of designated agent of complainant; form); and 16 Pa. Code § 42.108 (relating to continued involvement by Commission staff).

§ 42.107. Supervision of designated agent of complainant; form.

(a) Notwithstanding § 42.106 (relating to attorney or designated agent of complainant; forms), a designated agent of complainant may not present the case

in support of the complaint, at a public hearing under section 9(e) of the act (43 P. S. § 459(e)), unless that agent is a paralegal under the supervision of a practicing attorney.

(b) A designated agent of complainant, who intends to present the case in support of the complaint at a public hearing under section 9(e) of the act, shall file a Certificate of Supervision, signed by the practicing attorney under whose supervision the designated agent is performing, together with the Notice of Intent and Certificate of Authority under § 42.106.

(c) The Certificate of Supervision shall be in substantially the following form:

(Caption)

CERTIFICATE OF SUPERVISION

I, A. B., hereby certify that I am a practicing attorney, and that C. D., designated agent of complainant in the above-captioned proceeding, is a paralegal who shall be under my supervision during his/her presentation of the case in support of the complaint at public hearing.

/s/ _____

Address & Telephone No.

(d) A practicing attorney, who attests to the supervision of a designated agent of complainant under this section, shall file a Notice of Appearance in the form specified in 1 Pa. Code § 31.25 (relating to form of notice of appearance).

(e) Subsection (d) supplements 1 Pa. Code § 31.24 (relating to notice of appearance).

Source

The provisions of this § 42.107 adopted April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909.

§ 42.108. Continued involvement by Commission staff.

(a) Whenever the complainant files a Certificate of Authority under § 42.106 (relating to attorney or designated agent of complainant; forms), which allows the Commission staff counsel to remain involved in the proceeding at public hearing, a staff counsel may be assigned to represent the Commonwealth's interest in assuring that the policies and provisions of the act are protected at the public hearing. This involvement will allow the Commission staff counsel to participate in the public hearing process, but will not allow the Commission staff counsel to control the manner in which the complainant's private attorney prepares for or

conducts the public hearing on behalf of complainant, or to prevent a voluntary and knowing conciliation by the parties.

(b) Whenever the complainant files a Certificate of Authority, which does not allow the Commission staff counsel to remain involved, the staff counsel may file a request to remain involved. For good cause shown, the Commission may grant the request, and if granted, the Commission staff counsel may remain involved, as provided in subsection (a).

Source

The provisions of this § 42.108 adopted April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909.

Subchapter J. PRESIDING OFFICERS

Sec.

42.111. Powers and duties of hearing commissioners and permanent hearing examiners.

§ 42.111. Powers and duties of hearing commissioners and permanent hearing examiners.

(a) Hearing commissioners, or a permanent hearing examiner designated by the Chairperson under § 42.101(c) (relating to hearings), has the authority, as follows:

- (1) To rule upon motions or objections, except as set forth in paragraph (2).
- (2) 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.
- (3) To consolidate proceedings for hearing if necessary and appropriate to expedite the matter.
- (4) To conduct separate hearings of separate issues if necessary and appropriate to expedite the matter or where justice so requires.
- (5) To hold appropriate conferences before or during hearings.
- (6) To regulate the course of hearings, including the recessing, reconvening and adjournment thereof.
- (7) To administer oaths and affirmations.
- (8) To rule upon offers of proof and receive evidence.
- (9) To require the submission of additional evidence in accordance with 1 Pa. Code § 35.128 (relating to additional evidence).
- (10) To call and examine witnesses.
- (11) To issue preliminary rulings, findings, orders or relief as, in the judgment of the hearing commissioners, or the permanent hearing examiner, will expedite the proceedings.
- (12) To exclude from the hearing room or from further participation in the hearing any person who engages in improper conduct before them.

(b) In addition to the powers enumerated in subsection (a), the hearing commissioners or the permanent hearing examiner has all the authority vested in presiding officers under 1 Pa. Code § 35.187 (relating to authority delegated to presiding officers).

Source

The provisions of this § 42.111 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended October 28, 1983, effective October 29, 1983, 13 Pa.B. 3283; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial pages (84199) to (84200).

Notes of Decisions

Commission Authority Limited

The Pennsylvania Human Relations Commission did not have the power to overrule a decision of judicial officers denying requested accommodations to a litigant who claimed disability during a judicial proceeding. *Frampton v. Human Relations Commission*, 669 A.2d 473 (Pa. Cmwlth. 1995).

Examination of Witnesses

A permanent hearing examiner was authorized by law to question witnesses with regard to matters not addressed by a party's attorney. *Allison v. Human Relations Commission*, 716 A.2d 689 (Pa. Cmwlth. 1998).

Cross References

This section cited in 16 Pa. Code § 42.64 (relating to preliminary hearing officer).

Subchapter K. BRIEFS

Sec.
42.121. Briefs.

§ 42.121. Briefs.

(a) Unless waived by the participants with the consent of the hearing commissioners or the permanent hearing examiner, participants in a public hearing under Subchapter I (relating to hearings) shall have the right to file posthearing briefs. The manner and time of filing will be as directed by the hearing commissioners or examiner, giving regard for the magnitude of the record, the complexity of the issues, and other matters as may be deemed necessary or appropriate.

(b) In all cases heard by a panel of three Commissioners, an original and four conformed copies of all briefs shall be submitted, while in all cases heard by a permanent hearing examiner, an original and two conformed copies shall be submitted.

(c) Subsection (a) supersedes 1 Pa. Code § 35.191 (relating to proceedings in which briefs are to be filed).

(d) Subsection (a) supplements 1 Pa. Code §§ 35.128 and 35.187 (relating to additional evidence; and authority delegated to presiding officers).

Source

The provisions of this § 42.121 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended October 28, 1983, effective October 29, 1983, 13 Pa.B. 3282; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (84200).

Cross References

This section cited in 16 Pa. Code § 42.13 (relating to number of copies).

Subchapter L. MOTIONS COMMISSIONERS AND MOTIONS EXAMINERS

Sec.

42.131. Motions commissioners and motions examiners.

§ 42.131. Motions commissioners and motions examiners.

(a) The Commissioners may designate one or more commissioners to act as motions commissioner.

(b) The Commission may designate one or more full-time employes, who also function as permanent hearing examiners, to act as motions examiners.

(c) The motions commissioner or motions examiner designated by the Commissioners have the authority:

(1) To rule upon all motions or objections, except that a ruling on a motion or objection which would constitute a final determination of the proceedings will be ruled upon by the Commissioners.

(2) To issue orders as provided in Subchapter E (relating to discovery during investigation and in preparation for public hearing) and in § 42.34 (relating to motions).

(3) To authorize a preliminary hearing to expedite or facilitate a ruling on a matter before the motions commissioner or motions examiner, whenever a hearing is deemed necessary or appropriate.

(d) A motion, objection or request for discovery filed subsequent to the designation of hearing commissioners, a permanent hearing examiner or a preliminary hearing officer under § 42.101 (relating to hearings), or of a preliminary hearing officer under § 42.64(a) (relating to preliminary hearing officer), will be referred to the Commission, examiner or officer for a ruling thereon, except that a ruling or order which would constitute a final determination of the proceedings will be ruled upon by the Commissioners.

(e) A ruling or other order issued by a motions commissioner, motions examiner, hearing commissioner, permanent hearing examiner or preliminary hearing officer under the authority of this section will be a ruling of the Commission for all purposes.

Source

The provisions of § 42.131 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended October 28, 1983, effective October 29, 1983, 13 Pa.B. 3283; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909. Immediately preceding text appears at serial page (84201).

Cross References

This section cited in 16 Pa. Code § 42.103 (relating to subpoena for a hearing upon the merits).

Subchapter M. AGENCY ACTION

Sec.

42.141. Final orders.

§ 42.141. Final orders.

(a) If, upon all the evidence, the hearing commissioners or the permanent hearing examiner find that a respondent has engaged in any unlawful discriminatory practice, the commissioners or the examiner will state findings of fact, conclusions of law and recommendation, on the basis of which the Commission, after reference to the record, may issue an order requiring the respondent to cease and desist from the unlawful discriminatory practice, to take affirmative action, and to give other appropriate relief, or may reverse the recommendation and issue an order dismissing the complaint. The recommended findings, conclusions and order will accompany the order served on the parties to the complaint.

(b) If, upon all the evidence, the hearing commissioners or the permanent hearing examiner find that a respondent has not engaged in an unlawful discriminatory practice, they will state their findings of fact, conclusions of law and recommendation, on the basis of which the Commission, after reference to the record, may similarly issue an order dismissing the complaint, or may reverse the recommendation and issue an order requiring the respondent to cease and desist from the unlawful discriminatory practice, to take affirmative action and to give other appropriate relief. The recommended findings, conclusions and order will accompany the order served on the parties to the complaint.

(c) Findings of fact, conclusions of law, final decisions and orders made after a public hearing by the permanent hearing examiners, hearing commissioners or full Commission will be filed in the headquarters office of the Commission in Harrisburg and be open to public inspection and copying during regular business hours.

(d) Proposed findings of fact and conclusions of law and proposed final orders may be submitted by the parties and Commission staff counsel. When required by the hearing commissioners or the permanent hearing examiner, proposed findings of fact and conclusions of law and proposed final orders will be submitted within the time period fixed by the hearing commissioners or the permanent hearing examiner.

(e) Final orders will be those orders which are dispositive of the case. When a complaint contains one or more allegations under section 5(h) or 5.3 of the act (43 P. S. §§ 955(h) and 955.3), involving unlawful housing discrimination cognizable under the Fair Housing Act, or under section 5(d) or (e) of the act, when the underlying or supporting action involves unlawful housing discrimination cognizable under the Fair Housing Act, the case as to those allegations shall be completed, up to and including the issuance of a final order under this section, within 1 year from the date the complaint was filed with the Commission unless it is impracticable to do so, in which case the Commission will notify the parties in writing of the reasons for not doing so.

(f) Subsections (a)—(e) supersede 1 Pa. Code §§ 35.201—35.207, 35.211—35.214 and 35.226.

Source

The provisions of this § 42.141 adopted August 13, 1976, effective August 14, 1976, 6 Pa.B. 1887; amended October 28, 1983, effective October 29, 1983, 13 Pa.B. 3283; amended April 19, 1991, effective April 20, 1991, 21 Pa.B. 1909; amended December 17, 1993, effective December 18, 1993, 23 Pa.B. 5897. Immediately preceding text appears at serial pages (167577) to (167578).

[Next page is 43-1.]

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