

Human Rights Commission Guide for Complainants and Respondents: Filing or Responding to a Complaint

This guide explains your rights and the rules followed by the Human Rights Commission as it processes and investigates Complaints of Discrimination. If you have any questions, call the Commission toll free at 800-416-2010, or contact us by e-mail at human.rights@vermont.gov.

Please **keep and use this Guide** as a reference **throughout your involvement with the Human Rights Commission (HRC)**.

NAMES AND TITLES

- The person who files a Complaint of Discrimination is referred to as the "Complainant." The person or entity against whom the Complaint has been filed is referred to as the "Respondent."
- If the case involves a minor child or if there is otherwise good cause to avoid revealing the name of the Complainant to the public, a pseudonym will be assigned to the Complainant to protect his/her identity. That pseudonym will be used in the HRC's Investigative Report and in any documents that subsequently become public.

HRC DOES NOT REPRESENT THE PARTIES

- The Commission **does not represent** either the Complainant or Respondent. Neither party is required to hire an attorney, but both have the right to do so if they wish.

RETALIATION

- Retaliation by a Respondent against a Complainant or anyone else who has testified, assisted or participated in an investigation of a Complaint of Discrimination is a separate violation of the law. If any form of retaliation occurs after the filing of a Complaint, the Complainant should contact the HRC to report it.

INVESTIGATION PROCEDURE

- A Complaint of Discrimination is drafted by Commission staff and sent to the Complainant. The Complainant is requested to return the signed, notarized Complaint to the HRC within two weeks of the date on the letter accompanying the Complaint.
- When the signed, notarized Complaint of Discrimination is received by the Commission, a copy is sent to the Respondent. The Respondent is required to send the HRC a response to the Complaint within two weeks of the date on the letter accompanying the Complaint.

- An HRC Administrative Law Examiner (ALE) is assigned to investigate the case. Generally, the ALE begins new investigations in the order that Complaints are filed with the HRC. Investigations are typically completed within ten months of the filing of a Complaint, but may take longer depending on the nature of the case; housing investigations must be completed within 100 days.
- Both the Complainant and the Respondent should be prepared to supply the names and addresses of relevant witnesses and other pertinent data and documents that relate to the case.
- It is important that the parties provide the ALE with all relevant information during the investigation. If a Respondent refuses to provide the ALE with information or documents when requested to do so, the Commission may exercise its authority to issue a subpoena. A Respondent has the right to appeal a subpoena to the Human Rights Commissioners and/or to challenge the subpoena in court. The ALE may choose to skip the subpoena and write the report without the requested information. Once the Investigative Report has been published, no additional evidence will be considered by either the ALE or the Human Rights Commissioners.

WITHDRAWAL OR DISMISSAL OF COMPLAINT

- If the Complainant decides during the investigation (**up until the Investigative Report is written**) that he or she does not want the HRC investigation to continue, the Complainant may request that the Complaint be withdrawn. Withdrawals must be approved by the HRC's Executive Director.
- A Complaint may be rejected or dismissed at the discretion of HRC's Executive Director for reasons including the following:
 1. The Executive Director decides that the HRC does not have jurisdiction to investigate;
 2. The Complainant fails to return a signed, notarized Complaint within 60 days from the date it is sent by the HRC;
 3. The Complainant fails to cooperate with the investigation;
 4. The Complaint has been settled through informal conciliation or formal mediation;
 5. The Complainant decides to file a lawsuit before the HRC completes its investigation. In housing cases, the HRC will continue its investigation up to the point when a trial is commenced.

MEDIATION AND SETTLEMENT NEGOTIATIONS

- Throughout the investigation, the HRC may encourage both parties to think about whether they are willing to settle the case, and what terms they might agree to in a settlement. Either party may contact the ALE at

any time during the investigation to talk about making a settlement offer to the opposing party. The ALE will convey all settlement proposals and counter-proposals to the appropriate party. The HRC takes no position on the reasonableness of any parties' offer and may, in some circumstances, seek relief on behalf of the public interest (such as training, policy development or changes, etc.) in addition to the relief sought by the Complainant. If both parties agree to settlement terms, the ALE will draft a settlement agreement. The HRC may offer parties the opportunity to try to resolve cases with the assistance of an independent professional mediator. Mediation is entirely voluntary and offered by the HRC at no cost to either party. The HRC will pay for only one mediation session with a mediator chosen by the HRC. Parties are free to choose their own mediator but it is the parties' responsibility to pay him/her. Generally, no HRC staff members attend mediation sessions.

- Statements made in the course of settlement negotiations or mediation will not be considered as evidence by the ALE. If, however, the same information is available from another source, it may be used as evidence.
- If the parties are able to settle the case through the ALE, both parties must sign an agreement and after both parties have signed it will be presented to the Human Rights Commissioners for approval. If approved, the case will be closed. Final settlement agreements which are approved by the Commissioners become available for viewing by the general public upon request and the terms of the agreement are enforceable by the HRC.

RIGHT TO VIEW INVESTIGATIVE FILE

- At any time during the investigation, both parties have the right to examine the investigative file. The file will include everything gathered during the investigation except the names of any non-party witnesses whose identities the HRC finds good cause to protect, and other confidential or privileged information.

INVESTIGATIVE REPORT / HUMAN RIGHTS COMMISSIONERS

- If settlement is not considered or is not reached, the ALE will finish the investigation and will prepare an Investigative Report. Both parties will receive a copy of the Report, which contains the facts as the ALE found them, the legal analysis used in reaching the result, and a recommendation to the Commissioners of either reasonable grounds or no reasonable grounds to believe that unlawful discrimination occurred.
- The Investigative Report is not the final outcome of the case. Both parties have the right to respond in writing to the Report's recommendation within two weeks of the date of the cover letter accompanying the Investigative Report. The Investigative Report, along with any responses

from the parties will be sent to the Human Rights Commissioners before they meet to consider the case. At the Commission meeting, both parties have the opportunity to make a brief oral presentation to the Commissioners, and the Commissioners may ask the parties questions about the case. The parties' comments to the Commissioners must be limited to stating why they agree or disagree with the recommendation made in the Report. **No new evidence may be presented.** Generally, only the parties and their attorneys are allowed to be present when a case is presented to the Commissioners; exceptions are made for interpreters and/or for reasonable accommodations for individuals with disabilities.

FINAL DETERMINATION

- After considering the Report, written responses, and statements made at the Commission meeting, the Commissioners make a final determination to either accept or reject the ALE's recommendation of reasonable grounds or no reasonable grounds to believe that unlawful discrimination occurred. Reasonable grounds determinations made by the Commissioners become a matter of public record and the finding and Investigative Report will be posted on the HRC website. Hard copies of the Investigative Report are also available for review and copying at the HRC office in Montpelier.
- If the Commissioners determine that there are no reasonable grounds to believe that discrimination occurred, the case is closed and the identities of the parties are kept confidential. There is no direct appeal from a decision of the Human Rights Commission.
- Regardless of the Commissioners' final determination, a Complainant may still have the right to file a private action in court. Cases must be filed in court within the timeframes set out in law. If a Complainant is considering litigation, s/he is advised to seek the advice of an attorney in order to ensure timely filing.
- If the Commissioners find reasonable grounds to believe that unlawful discrimination occurred, the case is transferred to HRC's Executive Director to assist the parties in negotiating a settlement. The Executive Director may also offer parties the opportunity to resolve the case with the assistance of an independent, professional mediator. If a settlement cannot be reached within the time period set by the Commissioners (usually three months from the date of the final determination), the Commissioners will decide whether to close the case or take the case to court. If the Commissioners decide to file a lawsuit, the case is filed in the name of the HRC to protect or enforce the public interest and to address the rights of the aggrieved party. In any such action, the Complainant may choose to be represented by his/her own attorney.