COMMISSION ON HUMAN RIGHTS

Notice of Adoption

NOTICE IS HEREBY GIVEN, pursuant to the authority vested in the New York City Commission on Human Rights ("Commission") by section 905(e)(9) of the New York City Charter and in accordance with the requirements of Section 1043 of the Charter, that the Commission has amended its rules governing practices and procedures for case management.

The required public hearing was held on May 30, 2019.

Statement of Basis and Purpose of Rule

The Commission is amending Chapter 1 of its rules to update the procedures and practices related to how cases are filed, investigated, and litigated at the Commission.

The Commission's authority for this rule is found in sections 905(9) and 1043 of the New York City Charter.

New material is underlined.
[Deleted material is in brackets.]

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Chapter 1 of Title 47 of the Official Compilation of the Rules of the City of New York is repealed in its entirety and replaced as follows:

CHAPTER 1
PRACTICE AND PROCEDURE

SUBCHAPTER A
GENERAL

§ 1-01 Scope of Rules.

These rules are intended to carry out the provisions of the Human Rights Law ("NYCHRL"), title 8 of the Administrative Code of the City of New York ("the Code"), and the policies and procedures of the Commission on Human Rights in connection therewith, as authorized by chapter 40 of the New York City Charter and § 8-117 of the Code.

§ 1-02 Organization of Commission.

In order to carry out its various statutory responsibilities in a fair and impartial fashion, the Commission has separated its functions into discrete bureaus and offices, which, among other things, separate the Chair from the investigatory and prosecutorial functions of the agency. In

addition to the Chair and the Commissioners, the following components of the Commission are directly involved in the enforcement of the NYCHRL:

(a) *Law Enforcement Bureau*. The Law Enforcement Bureau is charged with the Commission's investigatory and prosecutorial functions. Where an action is authorized or required to be taken by the Law Enforcement Bureau, such action must be taken by the Deputy Commissioner for Law Enforcement, such Law Enforcement Bureau staff as the Deputy Commissioner may designate, or such person as may be appointed by the Chair of the Commission.

(b) *Office of General Counsel*. The Office of General Counsel serves as counsel to the Chair and to the Commissioners. Where an action is authorized or required to be taken by the Office of General Counsel, such action must be taken by the General Counsel, such staff of the Office of General Counsel as the General Counsel may designate, or such person as may be appointed by the Chair of the Commission.

(c) *Office of Mediation and Conflict Resolution*. The Office of Mediation and Conflict Resolution provides mediation services in connection with complaints that have been filed at the Commission. The Office of Mediation and Conflict Resolution operates independently from any other office within the Commission. Where an action is authorized or required to be taken by the Office of Mediation and Conflict Resolution, such action must be taken by the Director of the Office of Mediation and Conflict Resolution, such staff of the Office of Mediation and Conflict Resolution as the Director may designate, or such person as may be appointed by the Chair of the Commission.

(d) *Office of the Chair*. The Office of the Chair is charged with the Commission's adjudicatory functions. Where an action is authorized or required to be taken by the Office of the Chair, such action must be taken by the Chair or such person as may be appointed by the Chair of the Commission, except such person may not include the Deputy Commissioner or staff of the Law Enforcement Bureau.

§ 1-03 Definitions and Construction.

Amended pleadings. For purposes of this chapter, amended complaints must be treated the same as complaints, and amended answers must be treated the same as answers, except as otherwise specifically provided.

Administrative cause. For purposes of this chapter, the term "administrative cause" has the same meaning as "administrative convenience" as set forth in § 8-113 of the Code.

Calculation of dates and deadlines. For purposes of this chapter, where a deadline is specified in the Code, these rules, a Commission subpoena, or a Commission order by the expiration of a specified number of days, the deadline is calculated in calendar days, exclusive of the starting calendar day from which the calculation is made. If the expiration of a time requirement falls on a weekend or a legal holiday of the State of New York, the expiration date is the next business day following the expiration date.

Complaint. For purposes of this chapter, the term "complaint" means a formal, written complaint filed pursuant to subchapter B of these rules.

Complainant. For purposes of this chapter, the term "complainant" means a person who has filed a formal, written complaint pursuant to subchapter B of these rules.

Conciliation. For purposes of this chapter, the term "conciliation" refers to an agreement among persons including the Law Enforcement Bureau to resolve all or part of a case before the Commission.

Necessary party. For purposes of this chapter, the term "necessary party" means any person determined by the Law Enforcement Bureau or by an Administrative Law Judge to be a person who might be inequitably affected by a decision of the Commission, or any person whose absence would preclude complete relief between the complainant and the respondent.

Party. For purposes of this chapter, the term "party" means the Law Enforcement Bureau when acting as petitioner; respondents; complainants who intervene pursuant to § 2-25 of the Rules of Practice of the Office of Administrative Trials and Hearings (hereinafter "OATH"); or any necessary parties.

Person. For purposes of this chapter, the term "person" includes one or more natural persons, proprietorships, partnerships, associations, group associations, organizations, governmental bodies or agencies, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and associations, organizations, or groups that assert the civil rights of protected classes.

Respondent. For purposes of this chapter, the term "respondent" means a person who has been charged in a complaint filed pursuant to these rules with having committed an unlawful discriminatory practice, an act of discriminatory harassment or violence, or an act of bias-based profiling.

Rules. For purposes of this chapter, unless otherwise apparent from the context, the term "rules" means the provisions of chapter 1 of title 47 of the Rules of the City of New York.

Settlement. For purposes of this chapter, the term "settlement" refers to an agreement among persons not including the Law Enforcement Bureau to resolve all or part of a case before the Commission.

Singular and plural usage. For purposes of this chapter, words in the singular include the plural and words in the plural include the singular, as the context may require.

§ 1-04 Service of Papers.

(a) *Who can serve papers*. Except where otherwise prescribed by law or an order of the Commission or of a court, papers may be served by any person of the age of eighteen years or over.

(b) *Parties to be Served*. Each paper served on any party must be served on every other party who has appeared.

(c) *Service on persons represented by counsel*. Whenever a person required to be served with a paper pursuant to these rules has duly informed the Commission pursuant to § 1-15 of this chapter that such person is represented by counsel, service must be made on the person's counsel in lieu of service on the person unless, consistent with the New York Rules of Professional Conduct, the person seeking to make service has reason to conclude that the person to be served is not in fact represented by counsel. Notwithstanding the foregoing, in addition to serving administrative notices on a represented person's counsel, the Commission may also serve such notices the on the person.

(d) *Methods of service*.

(1) Papers other than subpoenas. A paper other than a subpoena is served under this rule by:

(i) handing it to the person;

(ii) mailing it to the person's last known address, unless the serving party has reason to know that the person to be served no longer resides there. Service by mail is effective:

i. five days from the date of mailing, if sent by first class mail.

ii. one day from the date of mailing, if sent by overnight delivery.

iii. for purposes of calculating deadlines for filing in state court, on the date of mailing. For example, the deadline for filing an appeal in state court should be calculated from the date of mailing of the decision that is the subject of the appeal.

(iii) leaving it:

i. at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

ii. if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(iv) sending it by email or facsimile, provided that either the person is represented by counsel and the papers are served on the attorney, or the person has provided written consent to such service pursuant to § 1-04(f) of this chapter. Service by email or facsimile is complete at the time of transmission, but is not effective if the serving party learns that it did not reach the person to be served;

(v) for service on corporations or other business entities, mailing it to the person registered with the New York State Department of State to receive service on behalf of the corporation or business entity or by serving the New York Department of State in accordance with applicable law; or

(vi) if no other method of service is effective, as specified in an order by the Chair.

(2) Subpoenas. A subpoena must be served in the manner provided for in the New York Civil Practice Law and Rules ("CPLR").

(e) *Proof of Service*. For purposes of this chapter, proof of service may include a written declaration, affidavit, affirmation, certification, or other statement made under penalty of perjury, specifying the papers served, the person who was served and the date, address, or, in the event there is no address, place and manner of service, and setting forth facts showing that the service was made by an authorized person and in an authorized manner.

(f) *Consent to email or facsimile service.* An unrepresented party who consents to service by email or facsimile must provide written notice to all other parties, including the case name, case number, and the email address or facsimile number through which the party consents to accept service. Written consent to service by email or facsimile will remain in effect unless the consenting party provides unambiguous notice that consent is being withdrawn. Counsel appearing on behalf of a party are presumed to have consented to service by email, absent an express statement to the contrary.

(g) *Service by email.*

(1) File format. Papers served by email, other than materials produced in response to investigatory demands and subpoenas, should be sent in PDF format. Text-searchable PDF format is strongly encouraged.

(2) Email subject lines. When service of papers is made by email, the subject line of the email must contain the case name and complaint number(s).

(h) *Parties' obligation to provide notice of changes in contact information and changes in counsel*. All parties have a continuing obligation to promptly advise the Commission of any changes in contact information or in representation by counsel. Notice of changes in contact information or in representation must also be promptly provided to all other parties.

(i) *Time for service of complaints*. A complaint must be served on each respondent within 120 days after it is filed. Claims against a respondent who is not timely served must be dismissed without prejudice, unless the Law Enforcement Bureau determines that good cause exists for an extension of the service deadline.

§ 1-05 Power Delegated to the Chair of the Commission to Propose Rules.

The Commission delegates to the Chair of the Commission authority to propose rules prior to their final adoption by the Commission, pursuant to chapter 1 of title 8 of the Code and § 905 of the New York City Charter.

§ 1-06 General Procedure for Requesting Orders by the Chair, Except as Otherwise Specified.

Except as otherwise specifically provided in this chapter, when an application for an order from the Chair is authorized pursuant to the Code or this chapter, such application may be made by promptly filing a letter motion with the Office of the Chair, copies of which must also be served on all parties. The letter motion should set forth the nature of the request and the procedural stance of the case and should include any relevant supporting documentation. After the motion is served, the Office of the Chair will set deadlines for opposition and reply to the letter motion.

§ 1-07 Courtesy Paper Copies.

Courtesy paper copies of submissions exceeding 10 pages in length must be provided to the agency, even if service is made by electronic means.

§ 1-08 Recusal of the Chair of the Commission.

The Chair may recuse themself from a case if the Chair determines that recusal is appropriate based on considerations of fairness and applicable law. If the Chair recuses themself, General Counsel must appoint a panel of at least three other Commissioners to serve in place of the Chair for that matter.

SUBCHAPTER B
COMPLAINTS, ANSWERS, AND NOTIFICATION OF OBLIGATIONS

§ 1-11 Complaints Generally.

(a) *Who may file a complaint*.

(1) The Law Enforcement Bureau. The Law Enforcement Bureau may make, sign, and file a verified complaint alleging that a person has committed an unlawful discriminatory practice, an act of discriminatory harassment or violence, or an act of bias-based profiling.

(2) Complainants. Any person aggrieved by an unlawful discriminatory practice, an act of discriminatory harassment or violence, or an act of bias-based profiling may individually or by such person's attorney or representative acting with appropriate legal authority make, sign, and file a written verified complaint with the Law Enforcement Bureau in accordance with these rules. However, the Law Enforcement Bureau must decline to accept a complaint for filing in the following circumstances:

(i) Statute of limitations. The Law Enforcement Bureau must decline to file a complaint if the date of filing of the complaint would fall outside the statute of limitations set forth in § 8-109(e) of the Code. The Law Enforcement Bureau should determine whether tolling doctrines such as the continuing violation doctrine may apply and must honor valid tolling agreements.

(ii) Election of remedies. The Law Enforcement Bureau must decline to file a complaint if the alleged unlawful discriminatory practice, act of discriminatory harassment or violence, or act of bias-based profiling arises from the same grievance as in:

(A) a civil action previously initiated by complainant in a court of competent jurisdiction, unless such civil action has been dismissed without prejudice or withdrawn without prejudice.

(B) an action or proceeding previously filed by the complainant before any administrative agency under any other law of the state.

(C) a complaint previously filed by the complainant with the State Division of Human Rights, on which a final determination has been made.

(b) *Form of complaints*.

(1) Format. All complaints must be typewritten or written legibly in ink and must be signed and verified by the person making the complaint or, in the case of a Commission-initiated complaint, by the Law Enforcement Bureau.

(2) Caption. Each complaint must recite the name of each complainant and respondent in a caption in the following form:

CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS
----------x
In the Matter of the Complaint of: Verified Complaint

Complainant, Case No.

-against-

Respondent.
----------x

(c) *Contents of complaint.* A complaint must contain the following:

(1) the full name and address of the person or persons making the complaint or such other designation as appropriate. Each such person is denominated a complainant. If a

complaint is prepared by a complainant's attorney, the attorney's name, address, telephone number, email address, and facsimile number, if any, should also appear on the complaint;

(2) the full name and address, where known, of the person or persons alleged to have committed an unlawful discriminatory practice, act of discriminatory harassment or violence, or act of bias-based profiling. Each such person is denominated a respondent;

(3) a plain and concise statement of the specific facts constituting the alleged violation of the Code, set forth in consecutively numbered paragraphs. The statement of facts must contain, to the extent known to the complainant, the exact or approximate date or dates of the alleged discriminatory practices and, if the alleged violation of the Code is of a continuing nature, the dates between which that violation is alleged to have occurred; and the addresses or approximate locations of any places where the acts complained of are alleged to have occurred; and

(4) whether complainant has previously filed any other civil or administrative action alleging an unlawful discriminatory practice, act of discriminatory harassment or violence, or act of bias-based profiling with respect to the allegations that are the subject of the complaint. In the event of a prior filing, a statement of the title, docket number, or similar identifying number, and forum before which such other claim was filed, and a statement of the status or disposition of such other action or proceeding should be included.

(d) *What constitutes filing of a complaint or answer.* A signed, verified complaint or answer is filed when it is mailed to or personally served on the Law Enforcement Bureau.

(e) *Procedure following receipt of complaint.* Consistent with § 1-11(a)(1) of this chapter, when a complaint is filed, the Law Enforcement Bureau must record the date of filing and assign a complaint number to the complaint. The Law Enforcement Bureau must thereafter serve a copy of the filed complaint to each respondent and necessary party and must advise the respondents of their procedural rights and obligations.

§ 1-12 Commission-initiated Complaints.

(a) *Procedure following the filing of a Commission-initiated complaint.* At the time that a Commission-initiated complaint is filed, the Law Enforcement Bureau must record the date of filing and assign a complaint number to the complaint. The Law Enforcement Bureau must thereafter serve a copy of the filed complaint on each respondent and advise the respondents of their procedural rights and obligations.

(b) *Probable cause.* Commission-initiated complaints do not require a determination of probable cause.

§ 1-13 Amendments to Complaints.

(a) *General*. A complaint may be amended as of right at any time before the referral of the complaint to OATH. While a case is pending before OATH, amendments must be made in accordance with OATH rules. An amended complaint supersedes all prior complaints. Amending a complaint does not necessitate a reevaluation of the initial probable cause determination.

(b) *Statute of limitations*. With respect to respondents named in the original complaint, the date of filing an amended complaint relates back to the date the original complaint was filed. With respect to respondents named for the first time in an amended complaint, the statute of limitations must be assessed in accordance with the relation-back doctrine under New York law.

(c) *Additions or substitutions of the Commission.* The Law Enforcement Bureau may amend a complaint to add the Commission to a complaint or substitute the Commission for a complainant at any time after a complaint has been filed but before a final determination on the complaint has been made.

§ 1-14 Answer.

(a) *Time for filing*. A respondent must file an answer with the Law Enforcement Bureau within 30 days of having been served with a complaint.

(b) *Extension of time to answer.* A respondent may, for good cause, apply to the Law Enforcement Bureau for additional time to file an answer.

(c) *Form and content of answer*. The answer must be verified as to the truth of the statements therein and must, in consecutively numbered paragraphs that correspond to those in the complaint, specifically admit, deny, or explain each allegation, unless the respondent is without knowledge or information sufficient to form a belief about the allegation, in which case the respondent must so state, and such statement will operate as a denial. Any allegation in the complaint not specifically denied or explained will be deemed admitted unless good cause to the contrary is shown. To the extent that the respondent denies only part of an allegation, the respondent must state the extent of its denial and also state its response to the remaining portions of the allegation. All affirmative defenses and all mitigating factors recognized under the NYCHRL must be stated separately in the answer, or will be deemed waived, unless good cause to the contrary is shown.

(d) *Prohibition on counterclaims and cross-claims*. The respondent may not interpose counterclaims or cross-claims in the answer, but is not precluded from filing a complaint under § 1-11 of this chapter.

(e) *Position statements*. A respondent should include a position statement to be filed with its answer, which may facilitate efficient and early resolution of a matter. A position statement

will be shared with complainants and should detail the respondent's account of events relevant to the allegations in the complaint, and may include, if applicable:

(1) A description of, and supporting evidence related to, the respondent's policies, trainings, workshops, or other practices that are aimed at preventing or combating discrimination, harassment, and retaliation; and

(2) An explanation of the rationale behind the respondents' alleged conduct, and examples of the respondents' similar conduct toward persons other than the complainant(s) that may be relevant to the legal analysis of discrimination.

(f) *Amendment of answer*. A respondent may amend its answer at any time prior to the referral of a complaint to OATH. An amendment to an answer subsequent to the referral of a complaint to OATH may be made in accordance with OATH rules. An amended answer supersedes all prior answers.

(g) *Procedure following receipt of an answer and position statement.* The Law Enforcement Bureau must serve a copy of each answer and position statement on the complainant.

(h) *Failure to answer*. Failure to file a timely answer may result in a finding of default, in which case the allegations in the complaint will be deemed admitted.

§ 1-15 Notice of Representation by Counsel.

Complainants and respondents may be represented by counsel. Prior to issuance of a report and recommendation by OATH, counsel appearing for the first time must notify the Law Enforcement Bureau of the following: the person or persons for whom the attorney appears and the attorney's name, address, telephone number, email address, and fax number. After a report and recommendation has been issued by OATH, counsel appearing for the first time must file a similar notice of appearance with the Office of the Chair. If applicable, counsel appearing for the first time should also provide notice of consent to service by email pursuant to § 1-04(f) of this chapter.

§ 1-16 Rebuttal Statements.

Upon request from the Law Enforcement Bureau, a complainant may submit a rebuttal to a respondent's answer and position statement.

SUBCHAPTER C
WITHDRAWALS AND DISMISSALS

§ 1-21 Withdrawal of Complaints.

(a) *Legal effect of withdrawal*.

(1) Effect on the Law Enforcement Bureau. Unless a complaint is withdrawn pursuant to a conciliation agreement, the withdrawal of a complaint will be without prejudice to (i) the continued prosecution of the complaint by the Law Enforcement Bureau in accordance with these rules; (ii) the initiation of a complaint by the Law Enforcement Bureau based on the same facts; or (iii) the commencement of a civil action by the Corporation Counsel based on the same facts, pursuant to title 1, chapter 4 of the Code.

(2) Effect on complainant.

(i) Prior to withdrawal, complainants are cautioned to seek independent legal advice concerning whether the right to sue in another forum is preserved following the withdrawal of a complaint pursuant to § 8-112 of the Code.

(ii) Refiling at the Commission. Following a withdrawal, a complainant may refile with the Commission at the discretion of the Law Enforcement Bureau.

(iii) Refiling in other venues. A complainant's ability to refile in a venue other than the Commission is determined by the venue itself.

(b) *Procedure for withdrawals*.

(1) Prior to referral to OATH. A complainant may withdraw a complaint as of right at any time prior to being served by the Law Enforcement Bureau with a notice of referral to OATH. The complainant must provide signed, written notice to the Law Enforcement Bureau of the complainant's desire to withdraw a complaint. The Law Enforcement Bureau must promptly provide written notice to all parties of a withdrawal and the status of the case.

(2) While pending before OATH. While a case is pending before OATH, a complaint may be withdrawn in accordance with OATH rules of practice (48 RCNY § 2-26).

(3) After proceedings at OATH. After a case is returned to the Commission from OATH, a complainant seeking to withdraw a complaint must file a letter motion with the Office of the Chair. The Chair may, in its discretion, grant a motion to withdraw.

§ 1-22 Dismissal of Complaints.

(a) *Dismissals for administrative cause*. The Law Enforcement Bureau may, in its discretion, dismiss a complaint for administrative cause in accordance with § 8-113(a) of the Code at any time prior to the taking of testimony at a hearing. Administrative cause includes, but is not limited to, the following circumstances:

(1) The Law Enforcement Bureau has been unable to locate the complainant after diligent efforts to do so;

(2) Absent good cause, the complainant has repeatedly failed to appear at mutually agreed-upon appointments with the Law Enforcement Bureau or is unwilling to meet with the Law Enforcement Bureau, to provide requested documentation that is available to the complainant and that may be necessary for the case, or to attend a hearing;

(3) The complainant has repeatedly engaged in conduct which is disruptive to the orderly functioning of the Law Enforcement Bureau;

(4) The complainant is unwilling to accept any reasonable conciliation agreement, where the Law Enforcement Bureau's determination of reasonableness includes consideration of the nature of the alleged violation, the value of similar cases, the impact of the proposed agreement on the parties and the public, and potential litigation risks;

(5) Prosecution of the complaint will not serve the public interest. Without limitation, this includes those circumstances:

1. Where the evidence collected by the Law Enforcement Bureau indicates that further investigation is unlikely to result in a finding of probable cause;

2. Where, upon further investigation or discovery after a determination of probable cause, the evidence considered as a whole is no longer sufficient to warrant further prosecution;

3. Where the Law Enforcement Bureau determines that further investigation or prosecution of a case is likely to require a disproportionate investment of public resources relative to: the claims in the case, the potential remedies that may be available, or enforcement priorities identified by the Commission in a publicly-available strategic enforcement plan;

4. Where the complainant has previously filed a complaint or charge with any administrative agency under any federal law alleging an unlawful discriminatory practice, act of discriminatory harassment or violence, or act of bias-based profiling with respect to the same grievance that is the subject of the complaint;

5. Where the passage of time or other factors have materially impaired the ability of one or more parties to prove claims or defenses; or

6. Where further prosecution of the complaint at the Commission poses an unavoidable risk of actual, potential, or perceived prejudice.

(6) The complainant requests dismissal, 180 days have elapsed since the filing of the complaint with the Law Enforcement Bureau, and the Law Enforcement Bureau finds

that (i) the complaint has not been actively investigated and (ii) the respondent will not be unduly prejudiced thereby.

(b) *Mandatory dismissal for administrative cause*. The Law Enforcement Bureau must dismiss a complaint for administrative cause at any time prior to the filing of an answer by the respondent if the complainant requests such dismissal, unless the Law Enforcement Bureau has conducted an investigation of the complaint or has engaged the parties in conciliation after the time the complaint was filed.

(c) *Legal effect of dismissal for administrative cause.* A dismissal for administrative cause is without prejudice to filing a claim under § 8-502 of the Code.

(d) *Dismissal because the complaint is not within the jurisdiction of the Commission*. The Law Enforcement Bureau must dismiss a complaint in whole or in part where it concludes that the complaint or a portion thereof is not within the Commission's jurisdiction.

(e) *Dismissal for lack of probable cause*. If, after investigation, the Law Enforcement Bureau determines that probable cause does not exist to believe that the respondent has engaged or is engaging in an unlawful discriminatory practice, act of discriminatory harassment or violence, or act of bias-based profiling, the Bureau must dismiss the complaint in whole or in part as to such respondent.

(f) *Notification of dismissal*. When the Law Enforcement Bureau makes a determination pursuant to this section to dismiss a complaint, in whole or in part, it must promptly serve all parties, and OATH if the case is pending before OATH, with a formal notice of its determination, including a brief statement of the rationale for the dismissal. In addition, the Law Enforcement Bureau must simultaneously serve all parties with a notice of any preservation of claims, if applicable, and of the deadline and process for appeal.

§ 1-23 Administrative Appeal of Dismissal.

A complainant or respondent may appeal to the Office of the Chair for a review of a determination of the Law Enforcement Bureau to dismiss any portion of a complaint pursuant to § 1-22 of this chapter.

(a) *Timing*. Within 30 days of service of the notice of dismissal, a notice of appeal must be mailed or hand delivered to the Office of the Chair and must be served on all other parties. A request for extension of the time to file a notice of appeal must be submitted in writing to the Office of the Chair, with copies to all other parties, and will only be granted for good cause. Untimely appeals will be dismissed, unless good cause for delay is shown.

(b) *Content of a notice of appeal.* A notice of appeal should clearly state that an appeal is being requested, the date of the Law Enforcement Bureau's notice of dismissal that is being appealed, and the case number. At the same time that a party files a notice of appeal, it may also state, in writing, its reasons for challenging the dismissal, or it may wait to do so in comments filed pursuant to § 1-23(c) of this chapter.

(c) *Optional comments*. After a notice of appeal has been timely filed, the Office of the Chair must send a notice to all claimants, respondents, and necessary parties, setting a schedule for the optional submission of comments on the appeal.

(d) *Review by the Office of the Chair.* After the final deadline for the submission of comments pursuant to § 1-23(c) has passed, the Office of the Chair must conduct a review of the Law Enforcement Bureau's investigation file, the Law Enforcement Bureau's notice of dismissal, and any comments submitted in a timely manner by complainants, respondents, and any other necessary parties pursuant to § 1-23(c) of this chapter. The standard of review for an appeal is reasonableness as to findings of fact and *de novo* as to findings of law. After concluding the review, the Chair must issue an order affirming, reversing, or modifying the Law Enforcement Bureau's determination to dismiss, or remanding the matter for further investigation and action, and must, if applicable, provide notice of any right to further appeal. The Office of the Chair must serve a copy of such order on the Law Enforcement Bureau, complainant, respondent, and any other necessary parties.

SUBCHAPTER D
INVESTIGATORY PROCEDURES

§ 1-31 Policy.

The Law Enforcement Bureau has discretion to use investigatory procedures that it determines will best facilitate accurate, orderly, and thorough fact-finding.

§ 1-32 Pre-complaint Investigations.

In addition to conducting investigations of allegations contained in complaints filed pursuant to § 1-11 and § 1-12 of this chapter, the Law Enforcement Bureau may investigate on its own initiative possible violations of the NYCHRL.

§ 1-33 Investigatory Demands.

(a) *General*. Except as otherwise limited by law, the Law Enforcement Bureau may (i) demand from any person or party the production of materials relevant to a Commission investigation, including but not limited to documents, electronically stored information, or other materials; (ii) conduct interviews or depositions of any person; and (iii) undertake testing and such other investigatory tasks as the Law Enforcement Bureau deems appropriate.

(b) *Demands for preservation of records.* The Law Enforcement Bureau is authorized to make demands for the preservation of records and for the continuation of the practice of making and keeping records as permitted by § 8-114(b) of the Code. Such demand for preservation of records is effective immediately at the time of service of the demand and will remain in effect until the termination of all proceedings relating to any complaint or civil action commenced, including after the time for appeal has expired, or if no complaint or civil action is filed, will expire two years after the date of service of the preservation demand. A demand

for preservation must require that records preserved pursuant to the demand be made available for inspection by the Law Enforcement Bureau and/or be filed with the Law Enforcement Bureau.

For purposes of this provision, the term "records" means any form of recorded information, regardless of form or characteristics, including but not limited to books, papers, electronically-stored information, photographs, spreadsheets, graphs, maps, charts, drawings, audio recordings, video recordings, and machine-readable materials.

§ 1-34 Subpoenas.

(a) *General*. The Law Enforcement Bureau may issue and serve subpoenas *ad testificandum* and subpoenas *duces tecum* on any person. Subpoenas must be served in a manner prescribed by the CPLR.

(b) *Contents of a subpoena.* A subpoena must state with specificity (i) the form of evidence to be produced, including but not limited to testimony, documents, electronically stored information, or other materials; (ii) where applicable, the date ranges for which such evidence is sought; (iii) the deadline for production, which should be no less than 20 days from the date of service; (iv) where applicable, the format and manner in which evidence should be produced; and (v) information concerning whom to contact in the Law Enforcement Bureau with requests for extensions, inquiries, objections to a subpoena, and related matters. Where a subpoena demands the production of testimony, it must state the name of the subpoenaed person and the date, time, and location at which the person must appear.

§ 1-35 Objections to Investigatory Demands and Subpoenas.

(a) *Effect of Failing to Object*. Objections to an investigatory demand or subpoena that are not raised in accordance with this section, including by first raising objections with the Law Enforcement Bureau, may be deemed waived, absent a showing of good cause.

(b) *Initial Application to the Law Enforcement Bureau*. A person objecting to an investigatory demand or subpoena must confer in good faith with the Law Enforcement Bureau as soon as practicable and no later than 30 days after service of the investigatory demand or subpoena. The Law Enforcement Bureau may, in its discretion, extend the deadline for such objections.

(c) *Motion to the Office of the Chair*. If a conference with the Law Enforcement Bureau pursuant to § 1-35(b) of this chapter does not resolve a person's objections to an investigatory demand or subpoena, the person may file a letter motion with the Office of the Chair for a protective order within 14 days after the Law Enforcement Bureau provides notice of its decision on the movant's objections. Applications for an extension of the deadline for a motion for a protective order must be submitted to the Office of the Chair in writing and may be granted for good cause.

A motion for protective order must be served simultaneously on the Office of the Chair and the Law Enforcement Bureau and must include (i) a copy of the full investigatory demand or subpoena, (ii) confirmation that the movant conferred in good faith with the Law Enforcement Bureau pursuant to § 1-35(b) of this chapter; and (iii) a statement of the specific portion or portions of the investigatory demand or subpoena to which the movant objects and the grounds for objection.

The filing of a motion with the Office of the Chair will stay the deadline for production of only those materials that are the subject of the motion for a protective order, until the motion is decided. The Law Enforcement Bureau has 14 days from service of the motion to file and serve its opposition on the movant and the Office of the Chair. The movant may file a reply within 7 days after the Law Enforcement Bureau's opposition is filed. The Chair must promptly issue an order on the motion. A protective order may deny, limit, or condition the use of any disclosure device and should be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person.

(d) *Judicial review of subpoenas*. Consistent with CPLR 2304, after the Chair issues an order deciding a motion challenging a subpoena, the movant may seek review in state Supreme Court.

§ 1-36 Extensions of the Time to Comply With an Investigatory Demand or Subpoena.

A person seeking an extension of the time to comply with an investigatory demand or subpoena may, as soon as reasonably practicable prior to the expiration of the deadline to comply, submit a written request to the Law Enforcement Bureau stating the reasons that an extension is sought and the length of extension that is being requested. The Law Enforcement Bureau must promptly advise the person seeking an extension of its determination.

§ 1-37 Enforcement of Investigatory Demands and Subpoenas.

(a) *Investigatory Demands.* The Law Enforcement Bureau may file a letter motion to compel compliance with an investigatory demand with the Office of the Chair. Such motion must include a copy of the full investigatory demand and an affirmation stating efforts taken by the Law Enforcement Bureau to procure compliance with the demand, including efforts to confer with the subject of the demand. Opposition to a motion to compel compliance with an investigatory demand must be filed and served on the Law Enforcement Bureau and the Office of the Chair within 14 days of service of the motion. The Law Enforcement Bureau may file and serve a reply within 7 days of service after the opposition is filed. The Chair must promptly issue an order on the motion to compel.

In the event that a person fails to comply with an order compelling testimony or the production of evidence pursuant to an investigatory demand, the Chair may, on its own motion or at the request of the Law Enforcement Bureau, issue such order as may be just with regard to the non-compliance, including but not limited to: (i) holding that the issues to which the testimony or evidence are relevant will be resolved against the non-compliant person; (ii) prohibiting the non-compliant person from supporting or opposing designated

claims or defenses or from introducing designated evidence or testimony into the record; or (iii) striking out claims, affirmative defenses, or pleadings or parts thereof.

(b) *Subpoena enforcement.* Proceedings to enforce subpoenas are governed by Article 23 of the CPLR. The Law Enforcement Bureau may, in its discretion, file a letter motion to compel compliance with a subpoena with the Office of the Chair, or in state Supreme Court pursuant to CPLR 2308(b). A motion to the Office of the Chair to compel compliance with a subpoena are governed by § 1-37(a) of this chapter.

§ 1-38 Injunctions and Temporary Restraining Orders.

Consistent with § 8-122 of the Code, if the Law Enforcement Bureau finds that a respondent or a person acting in concert with a respondent is acting in a manner tending to render ineffectual relief that the Commission could order after a hearing, the Commission may commence a special proceeding in state Supreme Court for an order to show cause to enjoin such conduct pursuant to CPLR article 63.

§ 1-39 Redactions.

In response to an investigatory demand or subpoena, unless otherwise ordered by the Law Enforcement Bureau, all documents produced in connection with an investigation or case at the Commission that contain an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, a financial-account number, immigration status, or employer ID number, must be redacted to include only (i) the last four digits of the social-security number, taxpayer-identification number, financial-account number, or employer ID number; (ii) the year of the individual's birth; and (iii) the minor's initials.

§ 1-40 Availability of Investigatory Materials Following Dismissal of the Complaint.

Within 30 days of the issuance of an order of the Law Enforcement Bureau dismissing the complaint, the complainant and respondent may examine certain materials and documentation from the Law Enforcement Bureau's investigation of the complaint. Such materials and documentation are limited to the factual information uncovered during the investigation that led to the determination and may include, among other things: (i) intake forms and documents submitted by a complainant during intake of a case; (ii) complaints, answers, position statements, and rebuttals filed by the parties; (iii) motions and other administrative case filings; (iv) requests for information, investigatory demands, document requests, and subpoenas, unless prohibited by law or an order of the Commission or a court; (v) responses to requests for information, investigatory demands, document requests, and subpoenas, unless prohibited by law or an order of the Chair or a court; (vi) notes and recordings of interviews with witnesses; (vii) notes pertaining to investigative work such as site visits; (viii) correspondence pre-dating a finding of probable cause (*see* 48 RCNY § 2-29(b)(1)); (ix) call logs; (x) the results of electronic and internet searches; (xi) photographs, audio recordings, and video recordings; and (xii) documents pertaining to proceedings in other administrative or court proceedings involving any party to the case.

Notwithstanding the foregoing, the following materials are not subject to disclosure absent an order from a court or tribunal of competent jurisdiction: (i) materials that are protected by privilege under the CPLR, including attorney work product and attorney-client communications; (ii) any information about witnesses who request anonymity, unless the Law Enforcement Bureau relies on such witnesses in issuing a finding of probable cause or in prosecuting a case before OATH; (iii) materials that are not material or necessary, within the meaning of CPLR Article 31; (iv) correspondence post-dating a finding of probable cause (*see* 48 RCNY § 2-29(b)(1)); and (v) notes and correspondence related to settlement negotiations.

The Law Enforcement Bureau assesses whether production of sensitive information is appropriate, including production of financial information, medical information, and correspondence with treatment providers. Redactions are made where required by law and to prevent harassment.

SUBCHAPTER E
DETERMINATION OF WHETHER PROBABLE CAUSE EXISTS

§ 1-41 Basis of Determination.

The Law Enforcement Bureau must find probable cause exists to credit the allegations of a complaint that an unlawful discriminatory practice, act of discriminatory harassment or violence, or act of bias-based profiling has been or is being committed by a respondent where a reasonable person, looking at the evidence as a whole, could reach the conclusion that it is more likely than not that the unlawful discriminatory practice, act of discriminatory harassment or violence, or act of bias-based profiling was committed.

§ 1-42 Notice of Determination.

The Law Enforcement Bureau must serve the complainant and respondent with written notice of its determination as to whether probable cause exists. A determination to dismiss the complaint upon a finding of no probable cause must state the reasons for the Law Enforcement Bureau's conclusion.

§1-43 Review of Determination.

(a) *No review of probable cause determination.* A determination that probable cause exists to credit some or all of the allegations of a complaint is not subject to interlocutory review or appeal.

(b) *Review of determination of no probable cause.* A determination that dismisses a complaint, in whole or in part, on a finding of no probable cause is reviewable in accordance with § 1-23 of this chapter.

(c) *Withdrawal of a determination of probable cause*. Prior to a hearing before OATH, the Law Enforcement Bureau may withdraw a probable cause determination if it determines a reasonable person looking at the evidence as a whole could no longer reach the conclusion

that it is more likely than not that the unlawful discriminatory practice, act of discriminatory harassment or violence, or act of bias-based profiling was committed.

SUBCHAPTER F
SETTLEMENT AND CONCILIATION

§ 1-51 Settlement.

(a) *General*. A complainant, respondent, or any other necessary party may, at any time, enter into an agreement to settle a case.

(b) *Mediation*. The Law Enforcement Bureau may, in its discretion, refer a case to the Office of Mediation and Conflict Resolution for mediation of a settlement agreement as provided in subchapter H of this chapter.

(c) *Legal effect of settlement agreement.* Where a complainant agrees pursuant to a settlement agreement to withdraw a complaint, the legal effect of such withdrawal is governed by § 1-21(a) of this chapter.

§ 1-52 Conciliation.

(a) *General.* The Law Enforcement Bureau, complainant, respondent and any other necessary parties may, at any time after the filing of a complaint, agree to a conciliated resolution of a case.

(b) *Mediation*. The Law Enforcement Bureau may, in its discretion, refer a case to the Office of Mediation and Conflict Resolution for mediation of a conciliation agreement as provided in subchapter H of this chapter.

(c) *Conciliation agreements.*

1. Form and content. Every conciliation agreement must contain an acknowledgement of the execution of the agreement by the Law Enforcement Bureau and each complainant, respondent, and other necessary party who is party to the agreement. The provisions of the conciliation agreement may be such as are agreed to by the parties to the agreement.

2. Entry of order by Commission. When a conciliation agreement has been fully executed, the Law Enforcement Bureau must promptly forward such agreement to the Chair. The signature of the Chair on a conciliation agreement with the notation "SO ORDERED" will be construed to be an order of the Commission pursuant to § 8-115(d) of the Code, directing the parties to such agreement to perform each and every obligation under such conciliation agreement in the time and manner set forth in the agreement. The Chair must deliver the order of the Commission to the Law Enforcement Bureau for service on the parties to the agreement.

3. Effective date. A conciliation agreement is binding at the time that it is so-ordered by the Chair, after it has been executed by the parties to the agreement.

(d) *Legal effect of conciliation.* Where a complaint is withdrawn pursuant to a conciliation agreement, the legal effect of such withdrawal is governed by § 1-21(a) of this chapter.

SUBCHAPTER G
ADJUDICATION PROCEDURES

§ 1-61 Referral of Complaints to OATH.

(a) *Filing a notice of referral to OATH.* When the Law Enforcement Bureau determines that a case is ready for adjudication, the Bureau must refer the case to OATH by serving a notice of referral on the complainant, the respondent, and any necessary party, and filing it, along with copies of the pleadings, with OATH.

(b) *Contents of a notice of referral.* The notice of referral must include the last known address and telephone number of each complainant, respondent, and necessary party and must state whether the respondent has complied with the requirement of § l-14 of this chapter concerning the filing of an answer and, if not, whether the Law Enforcement Bureau seeks to have respondent held in default. The notice of referral must also inform the complainant of its right to intervene pursuant to OATH rules (*see* 48 RCNY § 2-25). No material relating to the investigation, the reasoning supporting a finding of probable cause, or the substance of conciliation efforts may be filed with OATH.

§ 1-62 Incorporation of OATH Rules of Practice for Cases Pending Before OATH.

Except as otherwise provided pursuant to these rules, the Commission adopts OATH's rules of practice relating to hearing and pre-hearing procedures (chapter l and subchapter C of chapter 2 of title 48 of the Rules of the City of New York), which apply to all cases during the period that they are pending before OATH.

§ 1-63 Interlocutory Review of Administrative Law Judge Decisions and Orders.

(a) *General.* A party may seek interlocutory review by the Office of the Chair of a decision or order of an Administrative Law Judge, when the presiding Administrative Law Judge has certified a question for review. Any question not certified by the presiding Administrative Law Judge may be raised by a party in comments responding to a report and recommendation pursuant to § 1-66 of this chapter. Any challenge that is certified by the Administrative Law Judge and entertained by the Office of the Chair will preclude further review of that issue by the Commission. The failure of a party to challenge a decision or order of an Administrative Law Judge, other than a report and recommendation, will not preclude that party from making such challenge in comments responding to the report and recommendation pursuant to § 1-66 of this chapter, provided that the party timely made its objection known to the Administrative Law Judge and that the grounds for such challenge are limited to those set forth to the Administrative Law Judge.

(b) *Review of motions for protective orders filed at OATH.* Within seven days of being served with a decision by an Administrative Law Judge to grant or deny any portion of a motion for a protective order pursuant to § 1-65 of this chapter, the person seeking the protective order may, as of right, seek review of such decision by the Office of the Chair. A motion for interlocutory review of an OATH decision on a motion for a protective order must include (i) copies of all original motion papers filed with OATH, (ii) a copy of the decision issued by the Administrative Law Judge on the original motion, and (iii) a statement of the prejudice that would result if the requested relief is denied. After the motion is served, the Office of the Chair will set deadlines for opposition and reply papers.

§ 1-64 Redacted Filings at OATH.

Unless otherwise ordered by an Administrative Law Judge or the Chair, all documents filed in connection with the adjudication of a case and that contain an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, a financial-account number, or employer ID number, must be redacted to include only (i) the last four digits of the social-security number, taxpayer-identification number, financial-account number, or employer ID number; (ii) the year of the individual's birth; and (iii) the minor's initials.

§ 1-65 Protective Orders.

(a) *General*. An Administrative Law Judge may at any time on his or her own initiative, or on the motion of any party or any person from whom or about whom a disclosure is sought, make a protective order denying, limiting, or conditioning the use of any disclosure device. Such order should be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person.

(b) *Interlocutory review*. Interlocutory review of a decision to grant or deny a motion for a protective order, in whole or in part, is governed by § 1-63(b) of this chapter.

(c) *Suspension of disclosure obligations while a motion for protective order is pending*. Service of a motion for a protective order will stay the obligation to disclose the particular materials in dispute until the date specified in an order on the motion issued by an Administrative Law Judge pursuant to § 1-65(a) of this chapter, or where interlocutory review of such order is sought pursuant to § 1-63(b) of this chapter, by the Chair on the motion for interlocutory review.

(d) *Materials related to immigration status.* Materials related to immigration status are not subject to disclosure or discovery absent an order to compel issued by the Chair. A party seeking production of such materials may move the Administrative Law Judge for a recommendation to the Chair for an order to compel. When deciding a motion for an order to compel the production of such materials, the Chair must consider the following factors: whether the materials are relevant and necessary to a claim or defense, and whether production of the materials will subject a party to annoyance, embarrassment, oppression,

undue burden, or prejudice (including *in terrorem* effect). Notwithstanding the foregoing, an individual may voluntarily produce or authorize the production of information about the individual's own immigration status.

§ 1-66 Post-hearing Comments.

(a) *Notice of right to file comments*. After receiving a report and recommendation from OATH, the Office of the Chair must promptly issue a notice to all parties advising of the deadline to file written comments with the Office of the Chair.

(b) *Timing, content, and service of written comments.* All written comments concerning a report and recommendation must be submitted within 30 days of service of the notice of the right to file such comments, unless an extension of time is granted pursuant to § 1-66(c) of this chapter. A party's written comments concerning a report and recommendation should raise any objections and should not exceed the scope of issues reflected in the OATH hearing record. Objections not raised in the comments may be deemed waived in any further proceedings. Comments must be served on all other parties and the Office of the Chair. Reply comments are not permitted, unless ordered by the Office of the Chair.

(c) *Extensions of the time to file comments*. A party seeking an extension of the time to file comments to a report and recommendation should promptly file with the Office of the Chair a written application for an extension, stating the date to which an extension is sought and the basis for the extension request. The Office of the Chair may grant a request for extension for good cause.

(d) *Notice of application for attorney's fees*. A complainant must clearly provide notice of its intent to seek attorney's fees in comments to a report and recommendation. Fee applications are governed by subchapter I of this chapter.

(e) *Amicus comments*. Within 30 days after a report and recommendation is issued by OATH, a non-party may submit a written request to the Office of the Chair for leave to file comments as amicus curiae. A request to file amicus comments may not exceed 3 pages and should include a concise statement of the identity of the amicus curiae, its interest in the case, and the reasons why amicus comments would serve the public interest and aid the Commission's resolution of a case. The Office of the Chair has discretion to grant or deny a request to file amicus comments. Where a request to file amicus comments is granted, the comments must be submitted within 30 days and may not exceed 8 pages.

§ 1-67 Review of a Report and Recommendation by the Office of the Chair.

(a) *General*. The Office of the Chair will commence consideration of a report and recommendation after it receives the report and recommendation and hearing record from OATH.

(b) *Recommended decisions and orders not completely disposing of a complaint*. The Chair may not issue a decision and order that is the subject of a report and recommendation which, if

adopted, would not resolve the complaint in its entirety, unless the Administrative Law Judge certifies the portion of the case proposed to be decided by the report and recommendation to the Chair for immediate consideration. Dismissal of all or part of a case by an Administrative Law Judge has the effect of a report and recommendation for the purpose of this section.

(c) *Decisions and orders*.

1. Decisions involving no attorney's fees. Where there is no finding of liability or where notice of an application for attorney's fees has not been properly filed, the Chair will issue a decision and order based on a review of the report and recommendation; the hearing record from OATH; comments on the report and recommendation; any motion papers filed at OATH and OATH decisions bearing on the merits of the case; and any supplemental evidence gathered by the Office of the Chair pursuant to § 1-69 of this chapter.

2. Decisions involving attorney's fees. Where a complainant has properly filed notice of an application for attorney's fees and where there is a finding of liability, the Chair will issue a memorandum decision based on a review of the report and recommendation; the hearing record from OATH; comments on the report and recommendation; any motion papers filed at OATH and OATH decisions bearing on the merits of the case; and any supplemental evidence gathered by the Office of the Chair pursuant to § 1-69 of this chapter. In addition, after briefing on attorney's fees has closed, the Chair must issue a decision and order resolving all issues of liability, damages, civil penalties, and attorney's fees.

3. Orders for relief. Upon a finding of liability, the Chair must order the respondent to cease and desist violating the NYCHRL. The Chair may also impose such additional relief as the Chair deems appropriate, in accordance with § 8-120 of the Code. The decision and order must be served on the Law Enforcement Bureau, complainant, respondent, and any necessary parties.

§ 1-68 Relief from Default After Issuance of a Report and Recommendation.

A respondent against whom a default has been entered pursuant to § 2-27(a) of OATH's rules (48 RCNY § 2-27) and who has not already moved for relief from default pursuant to § 2-27(b) of OATH's rules, may file a letter motion with the Office of the Chair to open the default at any time after the issuance of a report and recommendation and prior to the issuance by the Commission of a final decision and order. A motion to reopen must show either (a) lack of service or (b) both a showing of good cause for the default and a potentially meritorious defense to the complaint. The Office of the Chair will set deadlines for opposition and reply to a motion to open a default. In granting a motion to open a default, the Chair may impose such terms and conditions as the Chair deems to be just and equitable.

§ 1-69 Reopening of Proceeding.

Prior to the commencement of a judicial proceeding under § 8-123 of Code, the Chair may, on its own or on the motion of any party, order any proceeding reopened or vacate or modify any order or determination, whenever justice so requires.

In addition, the Office of the Chair may order supplemental briefing or hold a supplemental hearing after the issuance of a report and recommendation and a hearing at OATH. A request from a party seeking leave to file supplemental briefing or for a supplemental hearing must be included in any written comments filed under § 1-66 of this chapter.

SUBCHAPTER H
MEDIATION

§ 1-71 Referrals for Mediation.

The Law Enforcement Bureau may suggest or a respondent, complainant, or necessary party may request that a case be referred to the Office of Mediation and Conflict Resolution for mediation of a settlement or conciliation agreement. If complainant, respondent, and all other necessary parties agree to enter into mediation, the Law Enforcement Bureau may, in its discretion, refer a case to the Office of Mediation and Conflict Resolution.

SUBCHAPTER I
ATTORNEY'S FEES

§ 1-81 Applications for Attorney's Fees.

A complainant may apply to the Office of the Chair for an award of attorney's fees within 14 days of service of a memorandum decision holding a respondent liable for an unlawful discriminatory practice, act of discriminatory harassment, or act of bias-based profiling. An application for attorney's fees must include a memorandum and copies of time records, accompanied by an affidavit or affirmation. A respondent may file an opposition to an application for an award of attorney's fees within 14 days of service of the complainant's application for attorney's fees. The fee applicant's reply, if any, must be filed within 7 days of service of the respondent's opposition. In addition to filing with the Office of the Chair, copies of all papers relating to an application for an award of attorney's fees must also be served on the opposing party and the Law Enforcement Bureau. The Chair or the Chair's designee will decide an application for attorney's fees in a supplemental decision and order.

§ 1-82 Assessment of an Award of Attorney's Fees.

Attorney's fees will generally be calculated under the lodestar method, multiplying the number of hours reasonably expended on the case by a reasonable hourly rate. In assessing the amount of time reasonably spent on a matter, the Commission may consider, among other things, the novelty and difficulty of the issues presented in the case and the degree of success ultimately achieved, including whether the litigation acted as a catalyst to effect policy change on the part

of the respondent, regardless of whether that change has been implemented voluntarily. In assessing a reasonable hourly rate, the Commission may consider, among other things, the skill and experience of the attorney, and the hourly rate typically charged by attorneys of similar skill and experience litigating similar cases in New York county.

(a) *Billing judgment*. An applicant seeking attorney's fees should make a good faith effort to exclude from its fee request time for work that is excessive, redundant, or otherwise unnecessary. Regardless of who performs the work, tasks which are clerical or secretarial in nature should be billed at an administrative rate and tasks which could be performed by a paralegal should be billed as such.

(b) *Time records.* Time records should be set forth with sufficient particularity to enable an assessment of the accuracy of the records and whether the amount of time expended was reasonable. The Commission may reduce a fee award where time records do not adequately describe the nature of the work performed.

§ 1-83 Input from the Law Enforcement Bureau.

On its own accord or at the request of the Office of the Chair, the Law Enforcement Bureau may respond to a complainant's application for attorney's fees. The deadline for the Law Enforcement Bureau to file such a response is 20 days after the deadline for the complainant's reply papers, unless otherwise specified by the Office of the Chair.

SUBCHAPTER J
JUDICIAL REVIEW

§ 1-91 Judicial Review of Final Orders of the Commission.

Any complainant, respondent or other person aggrieved by a final order issued pursuant to § 8-120 or § 8-126 of the Code or an order issued pursuant to § 8-113(f) may obtain judicial review in accordance with § 8-123.