

Title 141 - THE NEBRASKA EQUAL OPPORTUNITY COMMISSION
NEBRASKA CIVIL RIGHTS ACT OF 1969
PUBLIC ACCOMMODATIONS

Chapter 3 - PUBLIC HEARINGS.

001 Public Hearings and Consolidation of Proceedings.

001.01 A hearing conducted by a Hearing Examiner hereunder shall be open to the public.

001.02 Two or more proceedings against the same respondent arising out of the same set of circumstances, or two or more proceedings by the same complainant against two or more respondents arising out of the same set of circumstances, may be consolidated by the Commission, in its discretion, for the purposes of public hearing.

002 Conduct of Hearing.

002.01 The hearing shall be conducted by a Hearing Examiner appointed by the Commission.

002.02 No Commissioner or staff member who participated in the investigation or in any conciliation conference relating to the particular charge shall conduct the public hearing involving said charge.

003 Powers and Duties of Person Conducting Hearing.

003.01 The Hearing Examiner conducting the public hearing shall have full authority to control the procedure of the hearing and, subject to the provisions of the Act, and these Rules and Regulations, shall have full authority to admit or exclude testimony or other evidence.

003.02 The Hearing Examiner conducting the hearing shall rule upon all motions or objections made by any party after she or he is appointed to conduct said hearing and prior to the issuance of her or his Recommended Order and Decision.

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003.03 The Hearing Examiner conducting the hearing may continue a hearing from day to day or adjourn it to a later date, by announcement thereof at the hearing or by appropriate notice to all parties.

003.04 The Hearing Examiner conducting the hearing may exclude from the hearing room or from further participation in the proceedings any person, other than the complainant and respondent, who engages in improper conduct at the hearing. At the request of either party, the Commissioner or Hearing Examiner conducting the hearing shall exclude witnesses from the hearing room.

004 Testimony and Other Evidence.

004.01 All testimony taken at the hearing shall be under oath or affirmation.

004.02 All testimony, so far as practicable, shall be subject to the same rules of evidence as are applicable in courts of record in the State of Nebraska.

004.03 Testimony or evidence may be given or received in a public hearing concerning endeavors to settle and adjust the alleged discriminatory public accommodations practice by conciliation.

004.04 Written stipulations may be introduced in evidence if signed by the attorneys of the parties sought to be bound thereby, or by any party personally if that party is not represented by an attorney. Oral stipulations may be made on the record of any public hearing.

004.05 The respondent shall have the right either in person and/or by her or his attorney to be present at the public hearing; to call, examine and cross-examine witnesses; and, subject to the provisions of the Act, and of these Rules and Regulations, to introduce documentary and other evidence into the record of the proceedings.

At the discretion of the Hearing Examiner, the complainant may be allowed to intervene and present testimony in person or by counsel.

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004.06 The Commission shall arrange for a record of the proceedings in any public hearing to be made, transcribed and filed in the Lincoln office of the Commission. Any such record will be available for examination by the public at reasonable times in the Lincoln office if written request is made at least seventy-two (72) hours (exclusive of Saturdays, Sundays and official State holidays) in advance unless the record has been filed with the court as the result of an appeal proceeding.

005 Motions and Objections.

005.01 Motions and Objections During Hearing. All motions and objections made during a public hearing shall be stated orally on the record and shall, with the rulings on such motions or objections by the Hearing Examiner conducting the hearing, be included in the stenographic transcript of the hearing.

005.02 Motions Before or After Hearing. All motions other than those made during a hearing shall be in writing and shall state briefly the order or relief applied for and the grounds for such motion. Any such motion shall be filed with the Commission and the Hearing Examiner if one has been appointed and a copy thereof shall be served at the same time, personally or by registered or certified mail, by the party making the motion upon the other party or parties. Answering statements, if any, shall be filed in writing with the Commission and the Hearing Examiner if one has been appointed within three (3) days (exclusive of Saturdays, Sundays and official State holidays) after service of the motion upon the party filing the answering statement, and a copy thereof shall be served within the same period upon the other party or parties. All motions shall be decided by the Commission or the Hearing Examiner if one has been appointed without oral argument thereon, unless it is determined by the Commission or the Hearing Examiner that oral arguments will be heard, in which case the parties shall be notified of such fact and of the time and place for such oral argument. The Commission shall arrange for a stenographic transcript, which, together with the written motion and the written answering statement, if any, and the ruling thereon of the Commission or Hearing Examiner conducting the hearing, shall constitute a part of the official record of the proceedings.

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006 Oral Argument and Briefs. The Hearing Examiner conducting the hearing shall permit the attorneys of the parties, or any party who is not represented by an attorney, to argue orally before her or him and to file briefs within such time as she or he may determine. Each party filing a brief shall file two (2) copies thereof with the Hearing Examiner conducting the public hearing and shall at the same time serve a copy thereof, personally or by registered or certified mail, on all other parties. No reply briefs may be filed with or will received by the Hearing Examiner conducting the public hearing.

007 Settlement Prior to Recommended Order and Decision.

007.01 If, after issuance and service of a complaint and notice of public hearing but prior to the close of the public hearing, the complainant and the respondent jointly notify the Commission in writing that they agreed to terms of settlement and adjustment, all of which are set forth in detail in said joint notification to the Commission, the Chairman or Executive Director of the Commission may order a postponement of the scheduled public hearing date, or a recessing of the public hearing if it is already in process.

007.02 If the terms of settlement and adjustment agreed to by the parties are approved by the Commission, or if said terms as modified by the Commission are agreed to by the parties, the Commission shall have the written terms of settlement and adjustment prepared and signed by the parties; and the Commission shall thereupon enter upon the parties an Order in accord with the Executed written terms of settlement and adjustment. Any such written terms of settlement and adjustment and any Order issued pursuant thereto shall have the same status and effect as any executed written terms of settlement and adjustment and Order entered pursuant thereto under 2.003 of these Rules and Regulations and shall be governed by the provisions of 2.003.03 of these Rules and Regulations, and shall be a matter of public record.

007.03 After the Commission has entered upon the parties the Order specified in 3.007.02 of these Rules and Regulations, it shall dismiss the complaint, but subject to the Commission's right to issue a complaint and order a public hearing under 2.004.01 of these Rules and Regulations.

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007.04 If the terms of settlement and adjustment agreed to by the parties are not approved by the Commission, the Commission need not enter upon the parties any Order in accord with said terms of settlement and adjustment, and may close the case as having been settled on terms not approved by the Commission; and, in such event, the Commission need not issue a complaint and order a public hearing in the event of an alleged violation of said terms of settlement and adjustment.

008 Recommended Order and Decision.

008.01 Following the taking of testimony, the hearing of oral argument and the consideration of briefs, if any, filed by the parties, the Hearing Examiner conducting the public hearing shall have prepared and served upon the Commission and upon all parties to the proceedings, personally or by registered or certified mail, a written and signed Recommended Order and Decision.

008.02 The Recommended Order and Decision shall include:

008.02A A summary of the respective contentions of the parties.

008.02B The Hearing Examiner's findings of fact based upon, and limited to, the testimony and other evidence in the record of the public hearing and upon evidence of which judicial notice may be taken by courts of record in the State of Nebraska.

008.02C The Hearing Examiner's determination as to whether or not a preponderance of the evidence sustains the complaint.

008.02D If it is the Hearing Examiner's determination that a preponderance of the evidence does not sustain the complaint, a recommended order of dismissal of the complaint.

008.02E If it is the Hearing Examiner's determination that a preponderance of the evidence does sustain the complaint, a recommended order requiring the respondent to cease and desist from the discriminatory public accommodations practice or practices complained of and to

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take such affirmative or other actions with respect to the complainant as will eliminate the effect of the discriminatory public accommodations practice or practices complained of, including but not limited to any one or more of the following: the extension of full, equal and unsegregated accommodations, advantages, facilities and privileges to all persons as in the judgement of the Commission will effectuate the purpose of this Act.

008.02F If any case to which 3.008.02E is applicable, a provision for reasonable reports to the Commission of compliance with the Recommended Order and Decision.