

RULE OF THE VERMONT HUMAN RIGHTS COMMISSION

DEFINITIONS

1. As used in this Rule:

- a) Assistance animal means an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that ameliorates or mitigates one or more identified symptoms or effects of a person's disability. Assistance animals are permitted as a reasonable accommodation in housing but are permitted in places of public accommodation only at the discretion of the entity.
- b) Commission means the Vermont Human Rights Commission as constituted under 9 V.S.A. §4551.
- c) Commissioners means the five (5) members appointed by the Governor pursuant to 9 V.S.A. §4551.
- d) Complaint means a written statement of the allegations constituting a prima facie case of discrimination that has been signed and sworn to under oath by the complainant and is accepted by the executive director for investigation.
- e) Executive Director means the licensed attorney appointed by the Commission to oversee the day-to-day operations of the agency and its staff.
- f) Informal case means a report to the Commission of allegations of discrimination that are accepted by the Commission's staff for an attempt at informal resolution.
- g) Mailed or date of mailing means the date on the correspondence accompanying any document mailed by the Commission staff to a party.
- h) Notify means to contact by telephonic, written or other electronic means such as e-mail or voice mail.
- i) Pre-determination conciliation agreement means a written Commissioner approved agreement entered into by the parties to resolve a complaint prior to completion of an investigation.

- j) Post-determination conciliation agreement means a written Commissioner approved agreement entered into by the parties to resolve a complaint after a finding by the Commission of reasonable grounds to believe that discrimination occurred.
- k) Service animal means any dog or miniature horse (that meets the qualifications listed in Rules 39-41) that has been individually trained to do work or perform tasks that mitigate the limitations caused by the person's qualifying disability. A service animal also includes service dogs used by firefighters, law enforcement and other rescue personnel.

COMPLAINTS

2. Any person who believes that he or she has been subjected to discrimination in violation of Vermont law enforced by the Human Rights Commission (Commission) may report allegations of discrimination to the Commission's staff in person, in writing, or by other means such as telephone or electronic mail. The Commission's staff may assist persons to put their allegations in writing. If the allegations state a prima facie case of discrimination, the Commission may accept it for investigation. Allegations of discrimination must be made to the Commission within one year of the last alleged discriminatory act or practice.

3. Consistent with the provisions of Section 2, any member of the Commission's staff may file a complaint of discrimination for the benefit of any person or persons affected by the alleged discrimination or in the public interest. If the Commission staff is unable to conduct an investigation of the Commission complaint due to a conflict of interest, the executive director may hire an outside investigator who shall prepare an investigative report to be submitted directly to the chair of the Commission.

4. In order to be considered for acceptance and investigation, allegations of discrimination shall be reduced to writing, signed, and sworn to under oath in front of a notary public. With regard to allegations the executive director has accepted for Commission investigation, the date the Commission receives the signed, sworn complaint shall constitute the date of filing of the complaint.

5. In matters in which the executive director has determined that time is of the essence, the Commission's staff may commence an investigation based solely upon the sworn statement of a complainant. Such sworn statement may be made via telephone, TTY, email, fax or other electronic means. Such complaint will be dismissed by the Commission's executive director if an original signed, sworn written complaint is not received at the Commission's office within fourteen (14) calendar days of the Commission's receipt of the initial sworn complaint. The receipt by the Commission of a sworn statement, be it oral or written, shall constitute the filing date of the complaint.

6. When a person alleges facts constituting a prima facie case of unlawful discrimination, the executive director may direct Commission staff to facilitate negotiations between the parties in an effort to resolve the dispute. Such an attempt at informal resolution is in lieu of accepting a complaint or an attempt to preclude the need for investigation after receipt of a complaint. If such efforts prove unsuccessful, the executive director may accept a complaint or the Commission staff may file a complaint in accord with Section 2 triggering a formal investigation.

7. All allegations and complaints shall remain confidential, and no information about them shall be revealed by the Commission to the public, unless and until the Commission issues a determination of reasonable grounds to believe that unlawful discrimination has occurred or becomes a party to a conciliation agreement pursuant to this Rule. Initial allegations of discrimination, and communication between the putative complainant and the Commission, shall not be considered a component of the investigative file should a complaint ensue. The contents of the investigative file are available to the parties for inspection and copying at the parties' expense during the Commission's regular business hours. A complaint shall include the name(s) of the complainant(s), the name(s) of the respondent(s), and a concise statement of facts concerning the alleged discriminatory act(s) or practice(s). If good cause is shown, the executive director may allow a duplicate complaint to be prepared using a pseudonym to protect a party's identity. If the commissioners find reasonable grounds to believe that unlawful discrimination occurred or approve a settlement between the parties, prior to the release of any documents Commission staff will substitute the pseudonym for the party's true identity.

COMPLAINT PROCESSING

8. The Commission's staff shall make every reasonable effort to send a copy of the sworn, written complaint, or notice of a sworn oral complaint to the respondent(s) within seven (7) calendar days of the date the complaint is filed.

9. The Commission's staff does not represent, does not favor and does not provide legal advice to any party during the course of an investigation.

10. Each respondent shall respond to the allegations in the complaint within fourteen (14) calendar days of the date on the letter accompanying the complaint to the respondent, unless an extension is granted by the Commission's staff for good cause. Each respondent shall raise any affirmative defenses in its response unless good cause is shown for raising the defense during the course of the Commission's investigation. However, in no event shall a defense be raised later than the interview of a party or that party's final witness. If a respondent fails to respond to the complaint or otherwise fails to cooperate with an investigation in a timely fashion, the investigation may proceed without the response and evidence and the investigative report and preliminary recommendation shall be based upon the available evidence.

11. A complaint may be amended by permission of the executive director. If there is an amendment, the respondent(s) will be allowed fourteen (14) calendar days from the date on the cover letter to provide a response to the amendment. Notice of the amendment shall be sent to the respondent(s) in accord with the procedures set forth in Section 8. Except for a technical amendment (one that is not substantive in nature), an amendment shall be signed and sworn by the complainant(s). A respondent is not required to respond to a technical amendment.

12. The Commission's staff shall endeavor to complete an investigation within six (6) months of the date a complaint is filed. If the investigation will take longer than six (6) months, the parties shall be notified of the reasons.

13. The Commission shall endeavor to conclude the administrative process or issue a final determination within twelve (12) months of the date

a complaint is filed. If it will take longer than twelve (12) months to do so, the executive director will notify the parties of the reasons.

14. During the investigation of a complaint, the Commission's staff may make available to the parties alternative means of resolving the dispute. Such means may include the Commission's staff directly facilitating settlement negotiations, or referring the matter to a professional mediator whose fee may be paid by the Commission. When the Commission's staff facilitates pre-determination settlement negotiations, staff shall communicate:

- a) the settlement proposal made by, or on behalf of, a party;
- b) that the Commission takes no position as to the reasonableness of any offer or counteroffer;
- c) whether the Commission is proposing a settlement term to further the public interest; and,
- d) that all settlement agreements will be submitted to the commissioners for their approval at the earliest possible opportunity.

15. If a majority of the commissioners participating in this decision approve an agreement, the Commission will take no further action on the complaint except that it may enforce the terms of the agreement in the event of a breach by the respondent. Once approved by the commissioners, a settlement agreement is a public document. The complaint will be closed once the Commission has determined that the terms of the agreement have been fully met. If the commissioners do not approve a settlement agreement, the complaint shall remain open for further negotiation or investigation. The Commission is not a party to waiver and/or release agreements reached between complainant(s) and respondent(s), and will not enforce such agreements.

16. During the pendency of an investigation, a complaint may be withdrawn by the complainant(s) with the approval of the executive director. Withdrawal by the complainant(s) shall not preclude the investigation of a complaint filed by the Commission's staff which alleges the same or similar acts of discrimination.

17. A complaint may be administratively dismissed by the executive director for good cause including but not limited to: a) lack of jurisdiction;

- b) failure to state a prima facie case;
- c) failure to return a signed, sworn complaint within thirty (30) calendar days (or within fourteen (14) calendar days of submission of a complaint filed pursuant to Section 5;
- d) failure of the complainant to keep the Commission apprised of the complainant's mailing address and other contact information;
- e) failure of the complainant to cooperate with the investigation;
- f) initiation by the complainant of an administrative or judicial action in another forum alleging the same facts alleged in the HRC complaint;
- g) failure of the complainant to accept appropriate relief offered by the respondent(s) after the Commission has issued a cause determination, and after all reasonable attempts at conciliation are exhausted.

The Commission's staff shall promptly notify the parties in writing of an administrative dismissal and shall inform the parties of the complainant's(s') rights in the matter.

COMPLAINT INVESTIGATION

18. Subpoenas issued by the Commission shall be accompanied by a notice explaining that the person or entity subpoenaed has the right to contest the subpoena at a hearing before no fewer than three (3) commissioners and the additional right to contest the subpoena in court. In order to contest a subpoena at a hearing before the commissioners, the person or entity subpoenaed must submit a written challenge to the subpoena that is received by the Commission no fewer than seven (7) calendar days before the next meeting of the commissioners following service of the subpoena. This seven (7) day period may be modified by the executive director for good cause shown by the person seeking such modification.

19. The Commission's staff may administer an oath before taking the statement of a witness or a party and may create an audio recording of any interview. The Commission's staff may exclude any and all persons from an interview with a party or witness other than a legal representative authorized to practice law, a union representative, a person necessary to

accommodate the disability of a witness or party, or a person necessary for language interpretation.

20. During an investigation, the Commission's staff shall make every reasonable effort to interview each relevant and noncumulative witness identified by a party and shall include in the investigative report summaries of relevant, noncumulative statements provided by each such witness. The decision whether or not to interview a person with knowledge of the circumstances surrounding the complaint is solely within the discretion of the Commission's staff. The Commission's staff shall have the authority to make limited disclosure of otherwise confidential information to a witness or potential witness only to the extent that such disclosure is necessary to pursue the Commission's investigation.

INVESTIGATIVE REPORTS

21. When an investigation has been completed, an investigative report shall be prepared and submitted to the executive director for approval. The investigative report shall contain a listing of documents reviewed, witnesses interviewed, a statement of facts, a legal analysis, and a preliminary recommendation to the commissioners.

22. The investigative report shall be sent to the parties. Each party shall have the opportunity to submit a written response to the report; however, no new evidence may be included in the written responses. All such responses must be received no later than fourteen (14) calendar days from the date of the cover letter accompanying the investigative report, unless the executive director modifies the fourteen (14) day period for good cause. Such responses may be submitted to the Commission's office by hand delivery, postal mail, email, fax, TTY or other reasonable means of electronic communication. Every reasonable effort shall be made to provide each response to the other party by mail, email or fax prior to the Commission meeting at which the investigative report will be considered.

COMMISSIONER CONSIDERATION OF COMPLAINTS

23. The commissioners shall make every reasonable effort to consider a case at the earliest available meeting following the mailing of the

investigative report to the parties. Continuance of the consideration of the complaint may be granted in the discretion of the executive director. A party must request a continuance within five (5) business days after the date on the cover letter scheduling the complaint before the commissioners.

24. Commissioners are expected to appear in person at regularly scheduled meetings. For good cause, as determined by the chair or in the chair's absence by the executive director, a commissioner may participate in Commission meetings by electronic means including telephonic or video conferencing. In accord with 9 V.S.A. §4551(c), the executive director may invite any member of the commission whose term has expired or who resigned during a term to act as an alternate if necessary to convene a quorum of the commission to act upon complaints pursuant to section 4554 of this title. An alternate shall only participate in the consideration of complaints at meetings attended and shall not be involved in setting the policies of the commission.

25. No later than seven (7) business days after receipt of the cover letter scheduling the matter before the Commission, parties shall submit any requests for reasonable accommodation or a language interpreter necessary to participate effectively in the Commission meeting. Upon a timely request, parties may be allowed to participate in Commission meetings by reasonable electronic means.

26. If a commissioner has a conflict of interest regarding a complaint brought before the Commission in a particular matter, that commissioner shall not participate in the discussion, deliberation or decision of the Commission in that matter, and shall be absent from the meeting during all consideration of such matter. If a commissioner knows of a potential conflict of interest, that fact shall be disclosed to all parties as soon as possible to determine if there is a real or apparent conflict of interest, and whether either party objects to that commissioner's participation in the meeting.

27. Each party attending a meeting of the commissioners may be accompanied by a legal representative authorized to practice law in any of the states or territories of the United States. In addition, subject to prior approval by the executive director, a party may be accompanied by a

person necessary to aid in the facilitation of the meeting to mitigate a party's limitations caused by a disability or to provide language interpretation.

28. At the meeting at which the commissioners consider an investigative report, each party shall be afforded a reasonable amount of time as determined by the chair to make an oral presentation and answer questions from the commissioners. The parties' presentations should address statements of facts, or omission of facts in the investigative report, and/or issues concerning interpretation of the law. No new evidence shall be accepted or considered during a Commission meeting.

29. In executive session, the commissioners will consider the investigative report, all timely written responses, and any oral presentations by the parties. At the same meeting the commissioners will make every reasonable effort to make a final determination. Under extraordinary circumstances, the commissioners may vote to reopen the matter for further investigation. A majority vote of the commissioners participating in this decision at a meeting at which there is a quorum shall constitute the final determination of the Commission. If a motion results in a tie vote, the commissioners may either reconsider the complaint at a subsequent meeting or issue a final determination that there are no reasonable grounds to believe that unlawful discrimination occurred.

30. The Commission's staff shall make every reasonable effort to promptly notify the parties of the Commission's final determination by contacting each party or the party's representative that same day. The Commission shall issue its final determination in writing and shall endeavor to mail the final determination to the parties within five (5) calendar days of the determination. If the commissioners determine that there are no reasonable grounds to believe that discrimination occurred, the Commission shall close the complaint, inform the parties of the complainant's (s') rights in the matter, and state that the Commission will make no public disclosure about the complaint.

31. Upon a final determination that there are reasonable grounds to believe that unlawful discrimination has occurred, the commissioners, prior to close of the meeting, shall designate a period of time up to six (6) months to

allow the parties an opportunity to negotiate a settlement agreement. After such a final determination, the Commission actively represents the public interest and becomes a party to the settlement discussions. This negotiation period may be extended at the discretion of the executive director if necessary to complete ongoing good faith negotiations so long as all parties consent to the extension. The negotiation period and any extension terminates upon any one party's statement that it is no longer interested in negotiating. If the complaint is not resolved through negotiation within the period of time designated by the commissioners (or as extended pursuant to this Rule) in a manner satisfactory to a majority of the commissioners, the commissioners shall decide to either bring a court action or cease any further action on the complaint. The Commission staff shall promptly notify the parties of such decision.

32. If the commissioners issue a final determination of reasonable grounds to believe that unlawful discrimination has occurred, within twenty-one (21) calendar days of such determination, the complainant shall provide the executive director a settlement proposal outlining the terms upon which the complainant desires to resolve the complaint. This period may be extended by the executive director upon a showing of good cause. If a complainant fails to provide a settlement proposal in a timely manner, the executive director may dismiss the complainant from the conciliation process. If, in the opinion of the executive director, a complainant fails to accept appropriate relief offered by the respondent, the executive director may dismiss the complainant and may elect to proceed with the complaint under the Commission's authority to seek remedial action in the public interest.

CONFIDENTIALITY

33. The complaint and investigative files maintained by the Commission are confidential and will only be released to the parties, their attorneys and to any state or federal law enforcement agency seeking to enforce anti-discrimination statutes upon reasonable request. The identities of non-party witnesses may be revealed as part of the investigative file upon request unless the executive director has determined that there is good cause to protect the witnesses' identities. Information, that is otherwise protected from public disclosure pursuant to 1 V.S.A. §317 (as from time to time

amended), may be withheld from the parties and their attorneys or provided in redacted form at the discretion of the executive director.

34. The Commission's investigative file includes all materials gathered by the Commission's investigators during the course of their investigation but does not include the Commission investigator's or counsel's work product or mental impressions of any witness or documents. The investigative file does not include materials submitted by the complainant or gathered by the Commission's intake worker during the intake process since these materials precede the investigative phase of the Commission's process. Such materials are confidential. The investigative file also does not include analysis, such as but not limited to, statistical analysis that the investigator has created with information provided by either party.

FILING OF LAWSUITS

35. In accordance with U.S. Department of Housing and Urban Development (HUD) funding requirements, in every housing complaint that has also been filed with HUD and in which the commissioners have issued a final determination of reasonable grounds, if conciliation efforts have failed, the commissioners shall direct the executive director to initiate litigation.

36. Either before or after a final determination, if it appears that immediate judicial relief is warranted, the commissioners may convene an emergency meeting either in person or via telephonic or electronic means to decide whether to authorize the executive director to commence an action in superior court. Such decision and authorization may be reached and given at a Commission meeting or may be reached or given by means such as telephone or electronic mail.

37. If prior to a final determination the complainant(s) initiates an administrative or judicial action against the respondent(s) based upon the matters alleged in the complaint, the investigation shall be administratively dismissed by the executive director and timely notice provided to the parties. If the complainant's complaint is dismissed, the Commission retains the discretion to file its own complaint regarding the matter that had been under investigation. The commissioners may decide it is in the public

interest to direct the executive director to intervene in any legal action initiated by the complainant(s).

38. The commissioners, at a Commission meeting at which there is a quorum present, may vote to direct the executive director to intervene in any other legal action, in furtherance of the public interest, in which the Commission has a direct and substantial interest.

PUBLIC ACCOMMODATIONS

39. The prohibitions in 9 V.S.A. §4502 are unless otherwise stated interpreted in accordance with the federal Americans with Disabilities Act (ADA), its implementing regulations and any subsequent amendments and with any interpretive guidance issued by the United States Department of Justice.

40. No owner or operator of a place of public accommodation shall refuse, deny or withhold from any place of accommodation, advantages, facilities and privileges of that place of public accommodation based on race, creed, color, national origin, marital status, sex, sexual orientation, gender identity, or disability. This prohibition includes:

- a) acts, practices or statements intended to discourage an individual in the exercise of the right to equal access to goods or services offered by the public accommodation; and/or
- b) the offering of goods or services in a markedly hostile or intimidating manner.

41. No owner or operator of a place of public accommodation shall refuse to permit a service animal in a place of public accommodation. Assistance animals other than dogs (or miniature horses which meet certain criteria) do not qualify as service animals under the Vermont Fair Housing and Public Accommodations Act and may be excluded from a public accommodation.

42. No educational institution shall refuse, deny or withhold from any place of accommodation, advantages, facilities and privileges of that place of public accommodation based on race, creed, color, national origin, marital status, sex, sexual orientation, gender identity, or disability. This provision

includes harassment based on any protected category including but not limited to student to student harassment. This prohibition does not include special education claims related to identification, evaluation or the provision of a free, appropriate public education (FAPE) or the terms of the individual education plan (IEP) for a student with a disability, where the acts or omissions were addressed or should have been addressed through the procedures in state or federal special education law.

HOUSING

43. The prohibitions in 9 V.S.A. §4503 are unless otherwise stated interpreted in accordance with the federal Fair Housing Act (FHA), its implementing regulations and any subsequent amendments and with any interpretive guidance issued by the United States Department of Housing and Urban Development (HUD).

44. No person shall discriminate against a person because of the disability of another person with whom the person resides or intends to reside, and/or because the person is otherwise associated with an individual with a disability.

45. A person shall not unreasonably restrict the number of individuals who may reside in a rental property that has the capacity to accommodate that number or more. Where a town or city has adopted reasonable occupancy ordinances, which are consistent with fair housing laws, the Commission will apply the ordinances.

46. No person shall discriminate in the sale or rental of a dwelling unit or other real estate against a recipient of public assistance, including housing assistance provided pursuant to any state or federal housing subsidy program.

47. No person shall make, print, or publish or cause any notice, statement, or advertisement, with respect to the sale or rental of a dwelling unit or other real estate that indicates any preference, limitation, or discrimination based on a person's race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, or disability, or because a person intends to occupy a dwelling with one or more minor

children, or because a person is a recipient of public assistance. This prohibition applies to buildings with three or fewer dwelling units that are occupied by the owner or a member of the owner's immediate family which are otherwise exempt from the prohibitions against discrimination in 9 V.S.A. §4503.

48. No person shall discriminate against a person with a qualifying disability in the sale or rental of a dwelling unit because a person relies upon aids such as attendants, specially trained animals, wheelchairs, or similar appliances or devices. This section requires that a housing provider allow as a reasonable accommodation to a "no pets" policy an assistance animal that is necessary to mitigate the limitations of a person's mental or physical disability.

49. No person shall refuse to permit the use of an assistance animal at such dwelling, whether or not the assistance animal has received special training, unless it can be shown that the individual assistance animal:

- a) poses a direct threat to the health or safety of others;
- b) would cause substantial physical damage to the property of others;
- c) would substantially interfere with the reasonable enjoyment of the housing opportunity by others; or,
- d) would not constitute a reasonable accommodation;
- e) or would constitute an undue burden, or would fundamentally alter the nature of the dwelling.

RETALIATION PROHIBITED

50. No person shall retaliate against any individual because that individual:

- a) has opposed any act or practice prohibited under 9 V.S.A. §§ 4502 or 4503; or
- b) has lodged a complaint with the Commission; or
- c) has testified, assisted or participated in any manner with the Human Rights Commission in the investigation of acts or practices prohibited by Chapter 139 of Title 9; or

- d) is known by the person to be about to lodge a complaint, testify or assist in an manner in an investigation of prohibited acts or practice under Chapter 139 of Title 9; or
- e) is believed by the person to have participated in any of the above protected activities.

51. No employer shall discharge or, in any other manner, retaliate against an employee who exercises or attempts to exercise his or her rights under Chapter 5 of 21 V.S.A.