

§100-6. Complaint procedures.

A. Filing a complaint.

- (1) Any person(s) claiming to be aggrieved by an unlawful practice may make, sign and file a verified complaint alleging violations of this chapter, which shall include the following information:
 - (a) The name and address of the aggrieved person(s);
 - (b) The name and address of the person(s) alleged to have committed the prohibited practice;
 - (c) A concise statement of the facts, including pertinent dates, constituting the alleged unlawful practice;
 - (d) If applicable, the address and a description of any housing accommodation or commercial property which is involved; and
 - (e) Such other information as may be required by the Commission.
- (2) Complaints may be filed in person or by mail at the Township Manager's office. All complaints must be received by the Township Manager's office within 180 days of the alleged unlawful practice, or the complaint will not be considered timely.
- (3) The Township Manager shall record the date and time of receiving the complaint and shall immediately forward a complete copy to the Chairperson of the Upper Merion Township Human Relations Commission.

B. Notification and answer.

- (1) Within 30 days of its receipt of a complaint, the Human Relations Commission shall determine if it has jurisdiction hereunder to hear the complaint. If the Commission determines that it does not have such jurisdiction, it shall dismiss the complaint and notify the aggrieved party. If the Commission determines it has jurisdiction to hear the complaint, it shall proceed as follows:
 - (a) Send a copy of the complaint to the person(s) charged with a unlawful practice (the "respondent"); and
 - (b) Send a notice to the person(s) aggrieved (the "complainant"), informing him/her that the complaint has been received.
- (2) The respondent shall file with the Township Manager a written verified answer to the complaint within 30 days of the respondent's receipt of the complaint from the

Township. It shall be conveyed by the Township Manager to the Chairperson of the Upper Merion Township Human Relations Commission within 10 days of its receipt by the Township Manager. The Commission shall promptly send a copy of the answer to the complainant.

C. Mediation.

- (1) After the answer has been received, the Commission shall, within 15 days, invite the parties to voluntarily participate in the mediation of their dispute. The parties shall respond to the invitation to mediate within 15 days of being invited to mediate. Mediation shall be conducted in accordance with procedures promulgated by the Commission.
- (2) If mediation is elected by the parties, the parties may jointly select a mediator, in which case they shall be jointly responsible for all financial costs and expenses associated with mediation and may allocate the costs of mediation as they agree. If the parties do not jointly select a mediator, or agree to allocation of costs pursuant to approved procedures of the Commission, the Chairperson of the Commission shall select a mediator, who may be either a member of the Commission or a volunteer from the community.
- (3) The parties shall notify the Commission as to whether the mediation successfully resolved the complaint. Mediation proceedings shall otherwise be confidential. Neither the results thereof nor any record made in connection therewith shall be made public unless agreed to in writing by both parties to the dispute.
- (4) Dismissal of the complaint following mediation.
 - (a) If the mediation has successfully resolved the complaint, the Commission shall promptly notify the parties that it has dismissed the complaint.

D. If the mediation has not successfully resolved the complaint, and only if the complaint alleges a violation of this chapter which is not otherwise proscribed under the Pennsylvania Human Relations Act and over which the Pennsylvania Human Relations Commission does not have jurisdiction, the Commission shall proceed as follows:

- (1) Investigation. The Commission shall, in a timely fashion, investigate the allegations of an unlawful practice set forth in the complaint by designating an investigator, who may be a member of the Commission. The Commission may, in the conduct of such investigation, issue subpoenas to any person charged with an unlawful practice commanding such person to furnish information, records or other documents, as necessary to assist in the Commission's investigation.
- (2) Finding of no cause. If it shall be determined after the Commission's investigation

that there is no probable cause for the allegations of the complaint, the Commission shall cause to be issued and served upon the parties written notice of such determination and dismissal of the complaint. This notice shall inform the person aggrieved that he/she has the right to pursue the matter in court.

- (3) Conciliation. If the Commission, after investigation, determines that probable cause exists for the allegations of the complaint, the Commission shall immediately endeavor to eliminate the unlawful practice complained of by persuasion, conference and conciliation. If it determines that conciliation may be a useful approach, the Commission shall designate one of its members as a conciliator, who shall undertake conciliation following approved procedures of the Commission.
- (4) Public hearing.
 - (a) If the Commission finds it is not possible to eliminate the unlawful practice by persuasion, conference and conciliation, the Commission shall cause to be issued and served a written notice scheduling a public hearing before the Commission at a time and place to be specified in such notice.
 - (b) The Commission may designate one or more of its members to preside at such a public hearing or it may, at its election, conduct such hearing en banc. Any Commission member who acted as a mediator, investigator or conciliator shall not participate in such public hearing except as a witness to present the results of the investigation.
 - (c) At the public hearing, both the complainant and the respondent shall be given the opportunity to appear, with or without counsel, to provide testimony and submit evidence. Formal rules of evidence shall not apply, but irrelevant or unduly repetitious evidence may be excluded by the Commission in its discretion. In addition, both the complainant and the respondent may introduce the testimony of additional witnesses and may submit documentary evidence.
 - (d) At the public hearing, the Commission shall be represented by the Township Solicitor. A court reporter shall make a formal record of the proceedings.
- (5) Findings and award. If, upon all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in any unlawful practice as defined in this chapter, the Commission shall state its findings of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful practice and to take such affirmative action, including, but not limited to: compensation for loss of work in matters involving the unlawful practice, hiring, reinstatement or upgrading of employees, with or without back pay, admission or restoration to membership in any respondent labor organization, the making of reasonable accommodations, or selling or leasing specified housing accommodations or publicly offered commercial property upon

such equal terms and conditions as was available to other persons at the time of the unlawful practice, and any other verifiable, reasonable out-of-pocket expenses caused by such unlawful discriminatory practice. Back pay liability shall not accrue from a date more than three years prior to the filing of a complaint charging violations of this chapter.

- (6) Civil penalties. The Commission's order may also assess a civil penalty against the respondent in an amount not exceeding \$10,000 with respect to all matters alleged in the complaint.
- (7) Attorneys' fees.
 - (a) If, upon consideration of all the evidence at the public hearing the Commission finds that a respondent has engaged in or is engaging in any unlawful practice, the Commission may award reasonable attorneys' fees and costs to the prevailing complainant. Such attorneys' fees and costs may include reasonable time for representation before the Commission at the public hearing under this chapter but shall not include time incurred in the filing of the complaint or appearances before the Commission or mediator in the mediation or conciliation process.
 - (b) If, upon all the evidence at the hearing, the Commission finds that a respondent has not engaged in or is not engaging in any unlawful practice and that the complaint was brought in bad faith, the Commission may award attorneys' fees and costs to the prevailing respondent.
- (8) In the event that a claim proceeds to court, the same rights and remedies shall be available.
- (9) Finding of no discrimination. If upon all the evidence the Commission shall find that a respondent has not engaged in any unlawful discriminatory act, the Commission shall state its findings of fact and shall issue and cause to be served on the parties an order dismissing the complaint as to such respondent.
- (10) Appeal. Any order of the Commission may be appealed to the Court of Common Pleas of Montgomery County within 30 days of its date as provided by law.
- (11) Enforcement. When the Commission has heard and decided any complaint brought before it, enforcement of its order shall be initiated by the filing of a petition in court, together with a transcript of the record of the hearing before the Commission, and issuance and service of a copy of said petition as in proceedings in equity.