

Title 16. Practice, Procedure, and Courts

Chapter X. Arkansas Fair Housing Commission, Department of Inspector General

Subchapter A. Generally

Part 70. Model Rules of Procedure for Arkansas Fair Housing Commission

Codification Notes. This part as codified prior to codification into the Code of Arkansas Rules provided as follows:

"July 21, 2005"

Subpart 1. Generally

16 CAR § 70-101. Statement of organization and operations.

(a) The Arkansas Fair Housing Commission is an agency of state government created by Acts 2001, No. 1785 (hereafter "act").

(b) The General Assembly has delegated to the commission:

(1) Regulatory authority to receive, investigate, and resolve complaints alleging violations of the act; and

(2) Education of the public as to the requirements of the act.

(c) Ultimate authority for the operation of the commission is in the commission.

(d) The individual charged with the day-to-day operations is referred to as Director of the Arkansas Fair Housing Commission, who is selected by the commission.

(e) From time to time, the commission promulgates rules.

Authority. Arkansas Code § 16-123-304.

16 CAR § 70-102. Information for public guidance.

(a)(1) The agency makes available a list of persons holding certain responsibilities for handling Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq., requests, licensing questions, and complaints so that the public may:

- (A) Obtain information about the Arkansas Fair Housing Commission; or
- (B) Make submissions or requests.

(2) The names, mailing addresses, telephone numbers, and electronic addresses can be obtained from the commission's office or website.

(b) The commission has a list of official forms used by the commission and a list of all formal, written statements of policy and written interpretative memoranda, and orders, decisions, and opinions resulting from adjudications, which may be obtained from the commission's office or website.

(c) Copies of all forms used by the commission, written statements of policy and written interpretive memoranda, and all orders issued by the commission may be obtained from the commission's office.

Authority. Arkansas Code § 16-123-304.

16 CAR § 70-103. General organization.

(a)(1) The business of the Arkansas Fair Housing Commission will be conducted in public meetings pursuant to Robert's Rules of Order.

(2) All meetings will be conducted in conformity with the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq.

(3) Regular meetings will be held on the third Thursday of each month at 1:30 p.m. at the Main Street Mall, 101 East Capitol, Little Rock, Arkansas.

(4) Special meetings will be held on the call of:

- (A) The Chair of the Arkansas Fair Housing Commission; or
- (B) Five (5) commissioners.

(b) A quorum for the transaction of business is seven (7).

(c)(1) The commission may create standing and ad hoc committees.

(2) The chair will select members of committees.

(3) A quorum for the transaction of committee business is a majority of the number of voting members of the committee.

(d)(1) The Director of the Arkansas Fair Housing Commission will prepare a draft agenda for regular and special meetings.

(2) The draft agenda will be approved by the chair, distributed to commission members, and made available to the public in advance of the meeting.

(3) The agenda should state with specificity the items that will be considered at a:

(A) Meeting;

(B) Hearing; or

(C) Workshop.

(4) The agenda should include, at a minimum, the following topics as applicable:

(A) The call to order;

(B) Approval of agenda;

(C) Approval of minutes;

(D) Director's report;

(E) Old business;

(F) New business; and

(G) Introduction of visitors.

(5)(A) The order of the agenda items is intended to be flexible and may be adjusted to meet the needs of the commission.

(B) Additionally, the agenda may be amended by appropriate motion.

Authority. Arkansas Code § 16-123-304.

16 CAR § 70-104. Rulemaking.

(a) Authority.

(1) The Arkansas Fair Housing Commission has been authorized by the General Assembly to promulgate rules, Section 5(a) of Acts 2001, No. 1785.

(2) The commission follows the procedural requirements of the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq., in particular Arkansas Code §§ 25-15-203 and 25-15-204.

(3) Additionally, the commission is required to abide by the provisions of Arkansas Code § 10-3-309.

(b) Initiation of rulemaking.

(1) The process of adopting a new rule or amending or repealing an existing rule (hereinafter referred to as “rulemaking”) may be initiated by request of the governing body that the staff or commission committee submit proposed drafts.

(2) Additionally, staff of the commission may request permission of the commission to initiate rulemaking.

(3) Third persons outside the agency may petition for the issuance, amendment, or repeal of any rule.

(c) Petition to initiate rulemaking.

(1)(A) Third parties may initiate rulemaking to adopt, amend, or repeal a rule by filing a petition with the commission to initiate rulemaking.

(B) The petition must contain:

(i) The name, address, and telephone number of the petitioner;

(ii) The specific rule or action requested;

(iii) The reasons for the rule or action requested; and

(iv) Facts showing that the petitioner:

(a) Is regulated by the commission; or

(b) Has a substantial interest in the rule or action requested.

(2) The petition to initiate rulemaking shall be filed with the Director of the Arkansas Fair Housing Commission, who will notify the Chair of the Arkansas Fair Housing Commission for distribution.

(3) The director will notify the chair of the petition for approval to distribute to agency members.

(4)(A) Within thirty (30) days after submission of the petition, the commission will either:

- (i) Deny the petition, stating its reasons in writing; or
- (ii) Initiate rulemaking.

(B) A special meeting will be called if necessary to meet this time frame.

(d) **Prefiling with the Bureau of Legislative Research.** Thirty (30) days before the public comment period ends, the commission will file with the Bureau of Legislative Research the text of the proposed rule or amendment as well as a financial impact statement and a bureau questionnaire as provided by Arkansas Code § 10-3-309.

(e) **Public input.**

(1)(A) Before finalizing language of a proposed new rule or an amendment to, or repeal of, an existing rule, the commission will receive public input through written comments and/or oral submissions.

(B) The commission will designate in its public notice the format and timing of public comment.

(2) Any public hearing will provide affected persons and other members of the public a reasonable opportunity for presentation of evidence, arguments, and oral statements within reasonable conditions and limitations imposed by the commission to avoid:

- (A) Duplication;
- (B) Irrelevant comments;
- (C) Unnecessary delay; or
- (D) Disruption of the proceedings.

(3)(A) The chair, any member of the commission, or any person designated by the commission may preside at the public hearing.

(B) The commission must ensure that the commission personnel responsible for preparing the proposed rule or amendment are available and will notify third parties initiating rule changes to be available to:

- (i) Explain the proposal; and
- (ii) Respond to questions or comments regarding the proposed rule.

(4) The commission must preserve the comments made at the public hearing by:

- (A) A certified court reporter; or
- (B) Recording instruments.

(5)(A) Any person may submit written statements within the specified period of time.

- (B) All timely, written statements will be:
 - (i) Considered by the commission; and
 - (ii) Made a part of the rulemaking record.

(f) Notice of rulemaking.

(1) The commission will give notice of proposed rulemaking to be published pursuant to Arkansas Code § 25-15-204.

(2) The notice will:

- (A) Set any written comment period; and
- (B) Specify the time, date, and place of any public hearing.

(g) Decision to adopt a rule.

(1) The commission will not finalize language of the rule or decide whether to adopt a rule until the period for public comment has expired.

(2) Before acting on a proposed rule, the commission will consider:

- (A) All of the written submissions and/or oral submissions received in the rulemaking proceeding or any memorandum summarizing such oral submissions; and
- (B) Any regulatory analysis or fiscal impact statement issued in the rulemaking proceedings.

(3) The commission may use its own experience, specialized knowledge, and judgment in the adoption of a rule.

(h) Variance between adopted rule and published notice of proposed rule.

(1) The commission may not adopt a rule that differs from the rule proposed in the published notice of the intended rulemaking on which the rule is based unless:

- (A) The final rule is in character with the original scheme and was a logical outgrowth of the notice and comments stemming from the proposed rule; or
- (B) The notice fairly apprised interested persons of the subject and the issues that would be considered so that those persons had an opportunity to comment.

(2) In determining whether the final rule is in character with the original scheme and was a logical outgrowth of the notice and comments and that the notice of intended rulemaking provided fair warning that the outcome of that rulemaking proceeding could be the rule in question, the commission must consider the following factors:

(A) The extent to which persons who will be affected by the rule should have understood that the rulemaking proceeding on which it is based could affect their interests;

(B) The extent to which the subject matter of the rule or issues determined by the rule are different from the subject matter or issues contained in the notice of intended rulemaking; and

(C) The extent to which the effects of the rule differ from the effects of the proposed rule contained in the notice of intended rulemaking.

(i) **Concise statement of reasons.**

(1)(A) When requested by an interested person, either prior to the adoption of a rule or within thirty (30) days after its adoption, the commission shall issue a concise statement of the principal reasons for and against its adoption of the rule.

(B) Requests for such a statement must be:

(i) In writing; and

(ii) Delivered to the director.

(C) The request should indicate whether the statement is sought for all or only a specified part of a rule.

(D) A request will be considered to have been submitted on the date on which it is received by the commission.

(2) The concise statement of reasons must contain:

(A) The commission's reasons for adopting the rule;

(B) An indication of any change between the text of the proposed rule and the text of the rule as finally adopted, with explanations for any such change; and

(C) The principal reasons urged in the rulemaking procedure for and against the rule and the commission's reasons for overruling the arguments made against the rule.

(j) **Contents.**

(1) The commission shall cause its rules to be published and made available to interested persons.

(2)(A) The publication must include:

(i) The text of the rule; and

(ii) A note containing the following:

(a) The date or dates the agency adopted or amended the rule;

(b) The effective date or dates of the rule;

(c) Any findings required by any provisions of law as a prerequisite to adoption for effectiveness of the rule; and

(d) Citation to the entire specific statutory or other authority authorizing the adoption of the rule;

(B) The publication of the rule or rules must state the date of publication.

(k) **Format.** The published rules of the commission will be organized substantially in the following format:

(1) Statement of organization and operations;

(2) Information for public guidance;

(3) General organization;

(4) Rulemaking;

(5) Emergency rulemaking;

(6) Declaratory orders;

(7) Adjudicative hearings; and

(8) Substantive rules and other rules of the commission.

(l) **Incorporation by reference.**

(1) By reference in a rule, the commission may incorporate all or any part of a code, standard, rule, or other matter if the commission finds that copying the matter in

the commission's rule would be unduly cumbersome, expensive, or otherwise inexpedient.

(2) The reference in the commission rule must:

(A) Fully and precisely identify the incorporated matter by title, citation, date, and edition, if any;

(B) Briefly indicate the precise subject and general contents of the incorporated matter; and

(C) State that the rule does not include any later amendments or editions of the incorporated matter.

(3) The commission may incorporate such a matter by reference in a proposed or adopted rule only if the agency makes copies of the incorporated matter readily available to the public.

(4) The rules must state how and where copies of the incorporated matter may be obtained at cost from:

(A) The commission; and

(B) An agency of the United States, this state, another state, or the organization, association, or persons originally issuing that matter.

(5) The commission must retain permanently a copy of any materials incorporated by reference in a rule of the commission.

(m) **Filing.**

(1) After the commission formally adopts a new rule or amends a current rule or repeals an existing rule, and after the rule change has been reviewed by the Legislative Council, the staff will file final copies of the rule:

(A) With the Secretary of State, the Arkansas State Library, and the bureau; or

(B) As otherwise provided by Arkansas Code § 25-15-204(d).

(2)(A) Proof of filing a copy of the rule, amendment, or repeal with the Secretary of State, the state library, and the bureau will be kept in a file maintained by the director.

(B) It is owned by the commission and kept at the commission's office.

(3) Notice of the rule change will be posted on the commission's website, if available.

Authority. Arkansas Code § 16-123-304.

16 CAR § 70-105. Emergency rulemaking.

(a) Request for emergency rulemaking.

(1) The proponent of a rule may request the Arkansas Fair Housing Commission to adopt an emergency rule.

(2) In addition to the text of the proposed rule or amendment to an existing rule and any other information required by 16 CAR § 70-104(c), the proponent will provide a written statement setting out the facts or circumstances that would support a finding of imminent peril to the public:

- (A) Health;
- (B) Safety; or
- (C) Welfare.

(b) Finding of an emergency.

(1) Upon receipt of the written statement requesting emergency rulemaking and documents or other evidence submitted in support of the assertion that an emergency exists, the commission will make an independent judgment as to whether the circumstances and facts constitute an imminent peril to the public health, safety, or welfare requiring adoption of the rule upon fewer than thirty (30) days' notice.

(2) If the commission determines that the circumstances warrant emergency rulemaking, it will make a written determination that sets out the reasons for the commission's finding that an emergency exists.

(3) Upon making this finding, the commission may:

- (A) Proceed to adopt the rule without any prior notice or hearing; or
- (B) Determine to provide an abbreviated notice and hearing.

(c) Effective date of emergency rule.

(1) The emergency rule will be effective immediately upon filing, or at a stated time less than ten (10) days thereafter, if the commission finds that this effective date is necessary because of imminent peril to the public:

- (A) Health;
- (B) Safety; or
- (C) Welfare.

(2) The commission will file with the rule:

(A) Its written findings justifying the determination that emergency rulemaking is appropriate; and

(B) If applicable, the basis for the effective date of the emergency rule being less than ten (10) days after the filing of the rule pursuant to Arkansas Code § 25-15-204(e).

(3) The commission will take appropriate measures to make emergency rules known to persons who may be affected by them.

Authority. Arkansas Code § 16-123-304.

16 CAR § 70-106. Adjudicative hearings.

(a) Scope of this section.

(1) This section applies in all administrative adjudications conducted by the Arkansas Fair Housing Commission.

(2) This procedure is developed to provide a process by which the commission formulates.

(b) **Presiding officer.** The Chair of the Arkansas Fair Housing Commission shall preside at the hearing or may designate one (1) or more members of the commission or one (1) or more examiners, referees, or hearing officers to preside at a hearing.

(c) Appearances.

(1) Any party appearing in any commission proceeding has the right, at his or her own expense, to be represented by counsel.

(2) The respondent may appear on his or her own behalf.

(3) Any attorney representing a party to an adjudicatory proceeding must file notice of appearance as soon as possible.

(4) Service on counsel of record is the equivalent of service on the party represented.

(5) On written motion served on the party represented and all other parties of record, the presiding officer may grant counsel of record leave to withdraw for good cause shown.

(d) **Consolidation.** If there are separate matters that involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would:

(1) Promote the just, speedy, and inexpensive resolution of the proceedings;
and

(2) Not unduly prejudice the rights of a party.

(e) **Notice to interested parties.** If it appears that the determination of the rights of parties in a proceeding will necessarily involve a determination of the substantial interests of persons who are not parties, the presiding officer may enter an order requiring that an absent person be:

(1) Notified of the proceeding; and

(2) Given an opportunity to be joined as a party of record.

(f) **Service of papers.** Unless the presiding officer otherwise orders, every pleading and every other paper filed for the proceeding, except applications for witness subpoenas and the subpoenas, shall be served on each party or the party's representative at the last address of record.

(g) **Initiation and notice of hearing.**

(1) An administrative adjudication is initiated by the issuance by the commission of a notice of hearing.

(2)(A) The notice of hearing will be sent to the respondent by United States mail, return receipt requested, delivery restricted to the named recipient or his or her agent.

(B) Notice shall be sufficient when it is so mailed to the respondent's latest address on file with the commission.

(3) Notice will be mailed at least twenty (20) days before the scheduled hearing.

(4) The notice will include:

(A) A statement of the time, place, and nature of the hearing;

(B) A statement of the legal authority and jurisdiction under which the hearing is to be held; and

(C) A short and plain statement of the matters of fact and law asserted.

(h) **Motions.**

(1) All requests for relief will be by motion.

(2) Motions must be in writing or made on the record during a hearing.

(3) A motion must fully state the action requested and the grounds relied upon.

(4) The original written motion will be filed with the commission.

(5) When time allows, the other parties may, within seven (7) days of the service of the written motion, file a response in opposition.

(6)(A) The presiding officer may conduct such proceedings and enter such orders as are deemed necessary to address issues raised by the motion.

(B) However, a presiding officer, other than the commission, will not enter a dispositive order unless expressly authorized in writing to do so.

(i) **Answer.** A respondent may file an answer.

(j) **Discovery.**

(1) Upon written request, the commission will provide the information designated in Arkansas Code § 25-15-208(a)(3).

(2) Such requests should be received by the commission at least ten (10) days before the scheduled hearing.

(k) **Continuances.**

(1)(A) The chair may grant a continuance of hearing for good cause shown.

(B) Requests for continuances will be made in writing.

(C) The request must:

(i) State the grounds to be considered; and

(ii) Be made as soon as practicable and, except in cases of emergencies, no later than five (5) days prior to the date noticed for the hearing.

(D) In determining whether to grant a continuance, the chair may consider:

(i) Prior continuances;

(ii) The interests of all parties;

(iii) The likelihood of informal settlements;

(iv) The existence of an emergency;

(v) Any objection;

(vi) Any applicable time requirement;

(vii) The existence of a conflict of the schedules of counsel, parties, or witnesses;

(viii) The time limits of the request; and

(ix) Other relevant factors.

(2) The chair may require documentation of any grounds for continuance.

(l) Hearing procedures.

(1)(A) The presiding officer presides at the hearing and may:

(i) Rule on motions;

(ii) Require briefs; and

(iii) Issue such orders as will ensure the orderly conduct of the proceedings.

(B) Provided, however, any presiding officer other than the commission shall not enter a dispositive order or proposed decision unless expressly authorized in writing to do so.

(2) All objections must be:

(A) Made in a timely manner; and

(B) Stated on the record.

(3) Parties have the right to participate or to be represented by counsel in all hearings or prehearing conferences related to their case.

(4) Subject to terms and conditions prescribed by the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq., parties:

(A) Have the right to:

(i) Introduce evidence on issues of material fact;

(ii) Cross-examine witnesses as necessary for a full and true disclosure of the facts; and

(iii) Present evidence in rebuttal; and

(B) Upon request by the commission, may submit briefs and engage in oral argument.

(5) The presiding officer is charged with maintaining the decorum of the hearing and may refuse to admit, or may expel, anyone whose conduct is disorderly.

(m) **Order of proceedings.** The presiding officer will conduct the hearing in the following manner:

(1) The presiding officer will give an opening statement, briefly describing the nature of the proceedings;

(2) The parties are to be given the opportunity to present opening statements;

(3) The parties will be allowed to present their cases in the sequence determined by the presiding officer;

(4)(A) Each witness must be:

(i) Sworn or affirmed by the presiding officer or the court reporter;

and

(ii) Subject to examination and cross-examination, as well as questioning by the commission.

(B) The presiding officer may limit questioning in a manner consistent with the law; and

(5) When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

(n) **Evidence.**

(1) The presiding officer shall rule on the admissibility of evidence and may, when appropriate, take official notice of facts in accordance with all applicable requirements of law.

(2)(A) Stipulation of facts is encouraged.

(B) The commission may make a decision based on stipulated facts.

(3)(A) Evidence in the proceeding must be confined to the issues set forth in the hearing notice unless:

(i) The parties waive their right to such notice; or

(ii) The presiding officer determines that good cause justifies expansion of the issues.

(B) If the presiding officer decides to admit evidence outside the scope of the notice, over the objection of a party who did not have actual notice of those issues, that party, upon timely request, will receive a continuance sufficient to prepare for the additional issue and to permit amendment of pleadings.

(4)(A) A party seeking admission of an exhibit must provide fifteen (15) copies of each exhibit at the hearing.

(B) The presiding officer must provide the opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility.

(C) All exhibits admitted into evidence must be:

(i) Appropriately marked; and

(ii) Made part of the record.

(5)(A) Any party may object to specific evidence or may request limits on the scope of the examination or cross-examination.

(B) A brief statement of the grounds upon which it is based shall accompany such an objection.

(C) The objection, the ruling on the objection, and the reasons for the ruling will be noted in the record.

(D) The presiding officer may:

(i) Rule on the objection at the time it is made; or

(ii) Reserve the ruling until the written decision.

(6)(A) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record.

(B) The party making the offer of proof for excluded oral testimony will briefly summarize the testimony or, with permission of the presiding officer, present the testimony.

(C) If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

(7)(A) Irrelevant, immaterial, and unduly repetitive evidence will be excluded.

(B) Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent men and women in the conduct of their affairs.

(8) **Reasonable inferences.** The finder of fact may base its findings of fact upon reasonable inferences derived from other evidence received.

(o) **Default.** If a party fails to appear or participate in an administrative adjudication after proper service of notice, the commission may proceed with the hearing and render a decision in the absence of the party.

(p) **Subpoenas.**

(1)(A) At the request of any party, the commission shall issue subpoenas for the attendance of witnesses at the hearing.

(B) The requesting party shall specify whether the witness is also requested to bring documents and reasonably identify said documents.

(2)(A) A subpoena may be served by any person:

(i) Specified by law to serve process; or

(ii) Who is not a party and who is eighteen (18) years of age or older.

(B) Delivering a copy to the person named in the subpoena shall make service.

(C) Proof of service may be made by affidavit of the person making service.

(D) The party seeking the subpoena shall:

(i) Have the burden of obtaining service of the process; and

(ii) Be charged with the responsibility of tendering appropriate mileage fees and witness fees pursuant to Rule 45, Arkansas Rules of Civil Procedure.

(E)(i) The witness must be served at least two (2) days prior to the hearing.

(ii) For good cause, the commission may authorize the subpoena to be served less than two (2) days before the hearing.

(3) Any motion to quash or limit the subpoena shall:

(A) Be filed with the commission; and

(B) State the grounds relied upon.

(q) Recording the proceedings.

(1) The responsibility to record the testimony heard at a hearing is borne by the commission.

(2) Upon the filing of a petition for judicial review, the commission will provide a verbatim transcript of testimony taken before the commission.

(r) Factors to be considered in imposing sanctions. In addition to any other considerations permitted by the act, if applicable, the commission in imposing any sanction may consider the following:

(1) The nature and degree of the misconduct for which the respondent is being sanctioned;

(2) The seriousness and circumstances surrounding this misconduct;

(3) The loss or damage to others;

(4) The assurance that those who seek similar services in the future will be protected from the type of misconduct found;

(5) The profit to the respondent;

(6) The avoidance of repetition;

(7) Whether the conduct was:

(A) Deliberate;

(B) Intentional; or

(C) Negligent;

(8) The deterrent effect on others;

(9) The conduct of the individual during the course of the disciplinary proceeding;

(10) The respondent's prior disciplinary record, including warnings; and

(11) Matters offered by the respondent in mitigation or extenuation, except that a claim of disability or impairment resulting from the use of alcohol or drugs may not be considered unless the respondent demonstrates that he or she is successfully pursuing in good faith a program of recovery.

(s) Final order.

(1)(A) The commission will serve on the respondent a written order that reflects the action taken by the commission.

(B) The order will include a recitation of facts found based on testimony and other evidence presented and reasonable inferences derived from the evidence pertinent to the issues of the case.

(C) It will also state conclusions of law and directives or other disposition entered against or in favor of the respondent.

(2)(A) The order will be served personally or by mail on the respondent.

(B) If counsel represents respondent, service of the order on respondent's counsel shall be deemed service on the respondent.

Authority. Arkansas Code § 16-123-304.