

Chapter 162-08 WAC

PRACTICE AND PROCEDURE

WAC

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- 162-08-141 Interrogatories to parties. [Order 35, § 162-08-141, filed 9/2/77; Order 7, § 162-08-141, filed 1/19/68.] Repealed by WSR 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).
- 162-08-151 Production of documents and things and entry upon land for inspection and other purposes. [Order 35, § 162-08-151, filed 9/2/77; Order 7, § 162-08-151, filed 1/19/68.] Repealed by WSR 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).
- 162-08-155 Physical and mental examination of persons. [Order 35, § 162-08-155, filed 9/2/77.] Repealed by WSR 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).
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- 162-08-212 Compensation and expenses of tribunal members. [Order 37, § 162-08-212, filed 10/27/77; Order 35, § 162-08-212, filed 9/2/77.] Repealed by WSR 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).
- 162-08-215 Removal of tribunal members for cause. [Order 35, § 162-08-215, filed 9/2/77; Order 33, § 162-08-215, filed 3/21/77.] Repealed by WSR 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).
- 162-08-217 Objection to manner of appointment. [Order 33, § 162-08-217, filed 3/21/77.] Repealed by WSR 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).
- 162-08-230 Depositions. [Rules (part), filed 3/23/62; Rule 8, filed 10/18/61.] Repealed by Order 7, filed 1/19/68.
- 162-08-275 Powers of tribunal chairperson. [Order 37, § 162-08-275, filed 10/27/77; Order 35, § 162-08-275, filed 9/2/77.] Repealed by WSR 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).
- 162-08-278 Powers and procedures of hearing tribunal. [Order 35, § 162-08-278, filed 9/2/77.] Repealed by WSR 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).
- 162-08-281 Consolidation of cases. [Order 7, § 162-08-281, filed 1/19/68.] Repealed by Order 35, filed 9/2/77.
- 162-08-284 No counterclaims or cross-claims. [Order 35, § 162-08-284, filed 9/2/77.] Repealed by WSR 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).
- 162-08-295 Consultation on issues. [Order 35, § 162-08-295, filed 9/2/77.] Repealed by WSR 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).
- 162-08-296 Default by respondent. [Order 35, § 162-08-296, filed 9/2/77.] Repealed by WSR 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).
- 162-08-321 Omitted matters. [Order 7, § 162-08-321, filed 1/19/68.] Repealed by Order 35, filed 9/2/77.
- 162-08-370 Official notice—Matters of law. [Rules (part), filed 3/23/62.] Repealed by Order 7, filed 1/19/68.
- 162-08-380 Official notice—Material facts. [Rules (part), filed 3/23/62.] Repealed by Order 7, filed 1/19/68.
- 162-08-400 Stipulations of fact admissible. [Rules (part), filed 3/23/62.] Repealed by Order 7, filed 1/19/68.
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- 162-08-415 Orders. [Rules (part), filed 3/23/62; Rule 9, filed 10/18/61.] Repealed by Order 7, filed 1/19/68.
- 162-08-420 Definition of issues before hearing. [Rules (part), filed 3/23/62.] Repealed by Order 7, filed 1/19/68.
- 162-08-430 Prehearing conference rule. [Rules (part), filed 3/23/62.] Repealed by Order 7, filed 1/19/68.
- 162-08-450 Submission of documentary evidence in advance. [Rules (part), filed 3/23/62.] Repealed by Order 7, filed 1/19/68.
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- 162-08-520 Rules of evidence and procedure. [Rules (part), filed 3/23/62; Rule (52), filed 10/18/61.] Repealed by Order 7, filed 1/19/68.
- 162-08-535 Amendment, modification, rescission and publication of rules—How rules may be amended. [Rules (part), filed 3/23/62.] Repealed by Order 7, filed 1/19/68.
- 162-08-540 Amendment, modification, rescission and publication of rules—Petition for rule making, amendment or repeal of rules. [Rules (part), filed 3/23/62.] Repealed by Order 7, filed 1/19/68.
- 162-08-580 Declaratory rulings. [Rules (part), filed 3/23/62.] Repealed by Order 7, filed 1/19/68.
- 162-08-620 Declaratory rulings. [Order 7, § 162-08-620, filed 1/19/68.] Repealed by Order 35, filed 9/2/77.
- 162-08-621 Consideration of economic values. [Order 35, § 162-08-621, filed 9/2/77.] Repealed by WSR 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).

I GENERAL

WAC 162-08-011 Scope of rules. (1) **General.** These rules (chapter 162-08 WAC) shall govern all practice and procedure before the commission, including practice before administrative law judges.

(2) The commission hereby readopts the rules of practice and procedure contained in chapter 162-08 WAC, as amended herein, except for WAC 162-08-108, 162-08-111, 162-08-114, 162-08-116, 162-08-121, 162-08-131, 162-08-135, 162-08-141, 162-08-151, 162-08-155, 162-08-161, 162-08-171, 162-08-212, 162-08-215, 162-08-217, 162-08-275, 162-08-278, 162-08-284, 162-08-295, and 162-08-296, which are hereby repealed or replaced as shown below.

(3) **Relation to statutes.** These rules supplement the statutory procedures in the Administrative Procedure Act, chapter 34.05 RCW, and the law against discrimination, chapter 49.60 RCW. Where provisions of the law against discrimination are inconsistent with the Administrative Procedure Act, the Administrative Procedure Act governs. RCW 34.05.030(4).

(4) **Amendments apply to pending cases.** An amendment to this chapter applies to cases pending at the time of the adoption of the amendment, unless the amendment or rule-making order says that it does not apply to pending cases. An amendment to this chapter does not require that anything already done be redone to comply with the amendment, unless the amendment expressly says so.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-011, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-011, filed 9/2/77; Order 7, § 162-08-011, filed 1/19/68.]

WAC 162-08-013 Interpretation—Waiver. (1) **Interpretation.** These rules shall be interpreted liberally to promote justice and to facilitate the decision of cases on the merits.

(2) **Waiver.** The chairperson of the commission or an administrative law judge, on their own initiative or on motion of a party, may waive or alter the procedures in any of these rules and may enlarge or shorten the time within which an act must be done in a particular case, in order to serve the ends of justice.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-013, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-013, filed 9/2/77.]

WAC 162-08-015 Sanctions. (1) **Administrative hearings.** In a case which has been noted for hearing the administrative law judge, on his or her own initiative or on motion of a party, may order a party or counsel who uses these rules for the purpose of delay, or who fails to comply with these rules or other procedures previously ordered, to satisfy terms or pay compensatory damages including attorney's fees to any other person who has been harmed by the delay or the failure to comply. The administrative law judge may condition the right of a party to take specific action or raise specific defenses on satisfaction of the terms of the order or payment of the damages and attorney's fees. The administrative law judge may condition the right of a counsel to participate further in the case upon satisfaction of the terms of an order or payment of the damages and attorney's fees. The administrative law judge shall incorporate in his or her final order any sanctions order which has not been complied with, so that the sanctions order may be enforced as provided in RCW 49.60.260 and 49.60.270 and appealed from as provided in RCW 34.05.514.

(2) **Other proceedings.** In a proceeding not covered by subsection (1) of this section, the chairperson of the commission may order a person or counsel who uses these rules for the purpose of delay, or who fails to comply with these rules or other procedures previously ordered, to satisfy terms, and the chairperson may condition further participation in a proceeding on compliance with these rules or orders imposing terms, but the chairperson of the commission shall not impose sanctions in the form of payment of damages or attorney's fees.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-015, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-015, filed 9/2/77.]

WAC 162-08-017 Usage and definitions. (1) **Usage.** In this chapter, unless the context indicates otherwise, the following words are used in the senses here expressed:

"Shall" expresses a command.

"May" expresses permission.

"Will" expresses the future occurrence of an event.

"Must" expresses a requirement that has to be met only if a person chooses to do something which the person is free to do or not to do. *Example:* "A respondent who wishes to raise any matter constituting an avoidance or affirmative defense . . . must plead the matter as an affirmative defense . . ."

(2) **Definitions.** In this chapter, unless the context indicates otherwise, the following words are used in the meaning here given:

"Administrative hearing" means a public hearing brought pursuant to RCW 49.60.250.

"Case" means the entire proceeding following from the filing of a complaint under RCW 49.60.230.

"Commission" means the Washington state human rights commission as an institution, whether acting through the commissioners, an administrative law judge, the executive director or staff, its legal counsel, or others, except where the context indicates one of the narrower meanings.

"Conciliation" means the process provided in RCW 49.60.240 for the elimination by conference, conciliation, and persuasion of an unfair practice after a finding has been made that there is reasonable cause for believing that the unfair practice has been or is being committed.

"Person" has the broad meaning given the word in RCW 49.60.040. It includes the commission.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-017, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-017, filed 9/2/77.]

WAC 162-08-019 Procedure when none is specified.

(1) **Any orderly procedure.** To take care of a problem for which no procedure is specified by this chapter, the Administrative Procedure Act, chapter 34.05 RCW, or the law against discrimination, chapter 49.60 RCW, any orderly procedure may be used. Appropriate procedures may be taken from the Washington civil rules for superior courts, the federal rules of civil procedure, or the rules of other administrative agencies of the state of Washington or of the United States.

(2) **By chairperson.** The chairperson of the commission or an administrative law judge may specify the procedure to be used to dispose of any matter not covered by this chapter, or any matter covered by a rule that has been waived or altered in the interest of justice under authority of WAC 162-08-013.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-019, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-019, filed 9/2/77.]

WAC 162-08-021 Who may appear and practice. No person other than the following may appear in a representative capacity before the commission or before an administrative law judge for a human rights hearing:

(1) **Washington lawyer.** An attorney at law entitled to practice before the supreme court of the state of Washington;

(2) **Other lawyer.** An attorney at law entitled to practice before the highest court of record of any other state, if attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by Washington law;

(3) **Legal intern.** A legal intern licensed to engage in the practice of law in the state of Washington under admission to practice Rule 9;

(4) **Officer, etc.** A bona fide officer, partner, or full time employee of an association, partnership, or corporation appearing for the association, or one of its members for the partnership, or corporation.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-021, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-021, filed 9/2/77; Order 7, § 162-08-021, filed 1/19/68.]

WAC 162-08-031 Computation of time. In computing any period of time prescribed or allowed by commission rules, by commission order, or by statute, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event, the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall not be counted.

[Order 35, § 162-08-031, filed 9/2/77; Order 7, § 162-08-031, filed 1/19/68.]

WAC 162-08-041 Service and filing of papers. (1)

How served. Service of papers may be made personally or by first-class mail, registered or certified mail, or telegraph, or by leaving a copy at the principal office or place of business of the person to be served.

(2) **Who serves.** The commission shall cause to be served all orders, notices and other papers issued by it, together with any other papers which it is required by law to serve. Every other paper shall be caused to be served by the party filing it.

(3) **Upon whom served.** All papers served by the commission or any party shall be served at the time of filing upon all counsel of record and upon parties not represented by counsel or upon their agents designated by them or by law. Any counsel entering an appearance subsequent to the initiation of the proceeding shall notify all other counsel then of record and all parties not represented by counsel of such fact.

(4) **Service on commission.** In a matter pending before the commission or an administrative law judge in which the commission is being represented by the attorney general or a staff person other than the clerk, service on the commission shall be made by serving the attorney or staff person who is acting for the commission. In such matters, *filing* a paper with the clerk is *not* service on the commission. Service of a petition for judicial review under the Administrative Procedure Act, chapter 34.05 RCW, is governed by RCW 34.05.542 and not by these rules.

(5) **Service by mail.** If service is made by mail, the papers shall be deposited in the post office addressed to the person on whom they are being served, with the postage prepaid. Unless earlier receipt is shown, service by mail shall be deemed complete upon the third day following the day upon which the papers are placed in the mail, unless the third day falls on a Saturday, Sunday or legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday or legal holiday following the third day.

(6) **Filing, generally.** Papers required to be filed with the commission shall be deemed filed on actual receipt at the commission's Olympia or Seattle office, or other place previously specified, accompanied by proof of service on any parties required to be served.

(7) **Filing with administrative law judge.** Papers required to be filed with an administrative law judge shall be filed with the clerk, 402 Evergreen Plaza, Mailstop FJ-41, Olympia, WA 98504, unless otherwise directed. They must be accompanied by proof of service on all parties required to be served. The original of each paper shall be filed, accompanied by two copies.

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[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-041, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-041, filed 9/2/77; Order 7, § 162-08-041, filed 1/19/68.]

WAC 162-08-051 Form of papers. Except for papers filed with an administrative law judge (covered by WAC 162-08-241) and any other papers where the form is specified by rule, papers may be submitted in any form. The commission requests, but does not require, that all papers be typewritten on white paper of letter size (8 1/2 x 11").

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-051, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-051, filed 9/2/77; Order 7, § 162-08-051, filed 1/19/68.]

WAC 162-08-061 Relationship of commission to complainant. (1) Commission's role and objectives.

In investigating cases the commission seeks to ascertain the facts in order to make an impartial finding of "reasonable cause" or "no reasonable cause." It has no predisposition in favor of either complainants or respondents. If "reasonable cause" is found, then the objective of the commission is to obtain the remedy that will best eliminate the unfair practices and prevent their recurrence. The judgment as to what will eliminate an unfair practice for purposes of reaching an agreement under RCW 49.60.240 is made initially by the executive director, or other staff persons pursuant to the executive director's direction, and ultimately by the commissioners. The judgment as to what will eliminate an unfair practice and carry out the purposes of the human rights law after hearing under RCW 49.60.250 is made by the administrative law judge. The commission was not designed to compete with the courts as a forum for the vindication of private rights; its task is to work for the public good of eliminating and preventing discrimination. Although the facts and circumstances giving rise to a claim of discrimination may sometimes give rise to other claims based upon other statutes or principles of common law, the commission will investigate only claims of unfair practices arising under chapter 49.60 RCW et seq. The law against discrimination expressly preserves the right of complainants and/or aggrieved parties to seek other civil or criminal remedies in court or other available forums, either simultaneously with a complaint filed with the commission or in lieu of such a complaint, subject to any limitations or conditions provided in WAC 162-08-062 or elsewhere.

(2) **Independence from complainant.** The commission's primary objective is to eliminate and prevent discrimination, which may or may not be consistent with the goals or objectives of a particular complainant or aggrieved person. In negotiating a settlement or seeking an order, the commission generally works for provisions restoring the complainant as nearly as possible to the position he or she would be in if he or she had not been discriminated against, because this is usually an effective way to eliminate the discrimination and prevent its recurrence. But where, in the commission's judgment, provisions fully restoring the complainant (for instance, reinstatement to the job with back pay) would be inadequate to eliminate a pattern of discrimination, the commission will hold out for additional terms, even though the respondent is willing to settle on the basis of full relief for the complainant only. Except as may be otherwise provided for complaints alleging unfair practices in real estate transactions, the com-

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mission may determine that discrimination will be effectively eliminated and prevented by an order that does not afford the complainant every item of relief to which he or she may have a legal claim. The commission assumes that persons who complain to it are as interested in the elimination and prevention of discrimination in general as in their individual cases. If a person is interested only in relief for himself or herself, he or she is advised to seek his or her remedy directly in court pursuant to RCW 49.60.020, 49.60.030 and/or WAC 162-08-062.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-08-061, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-061, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-061, filed 9/2/77; Order 7, § 162-08-061, filed 1/19/68.]

WAC 162-08-062 Concurrent remedies—Other remedies. Except as otherwise provided by RCW 49.60.340, the law against discrimination preserves the right of a complainant or aggrieved person to simultaneously pursue other available civil or criminal remedies for an alleged violation of the law in addition to, or in lieu of, filing an administrative complaint of discrimination with the commission, with the following limitations:

(1) **Abeyance—Real estate transactions.** A complaint of an unfair practice in a real estate transaction filed concurrently with the commission and another federal, state or local instrumentality with whom the commission has entered into a cooperative agreement under the terms of RCW 49.60.226 or other provision of law will be held in abeyance during the pendency of the other proceeding unless the other proceeding has been deferred pending state action under the terms of the cooperative agreement.

(2) **Abeyance—General rule.** A complaint of an unfair practice other than in real estate transactions will be held in abeyance during the pendency of a case in federal or state court litigating the same claim, whether under the law against discrimination or a similar law, unless the executive director or the commissioners direct that the complaint continue to be processed. A complaint of an unfair practice other than in real estate transactions will not be held in abeyance during pendency of a federal, state, or local administrative proceeding, unless the executive director or commissioners determine that it should be held in abeyance.

(3) No complainant or aggrieved person may secure relief from more than one governmental agency, instrumentality or tribunal for the same harm or injury.

(4) Where the complainant or aggrieved person elects to pursue simultaneous claims in more than one forum, the factual and legal determinations issued by the first tribunal to rule on the claims may, in some circumstances, be binding on all or portions of the claims pending before other tribunals.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-08-062, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-062, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-062, filed 9/2/77.]

II COMPLAINTS

WAC 162-08-071 Complaints by aggrieved persons.

(1) **Scope of section.** This section applies to complaints by (6/13/96)

persons claiming to be aggrieved by an alleged unfair practice filed under RCW 49.60.230 (1)(a), to complaints by employers or principals filed under RCW 49.60.230 (1)(c), and to complaints by "aggrieved persons" under RCW 49.60.040(15). Complaints issued by the commission are covered by WAC 162-08-072.

(2) **Signature and oath.** A complaint shall be in writing, signed by the complainant or the complainant's lawyer, and sworn to before a notary public or other person authorized by law to administer oaths, or subscribed and signed under the following declaration: "I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct." Notarial service for this purpose is available without charge at all offices of the commission.

(3) **Contents.** A complaint shall contain the following:

- (a) The name of the person making the complaint;
- (b) The name, address and telephone number, if any, of the person against whom the complaint is made, if known to the complainant;
- (c) A specific charge of an unfair practice(s);
- (d) A clear and concise statement of the facts which constitute the alleged unfair practice(s);
- (e) The date or dates of the alleged unfair practice(s), and if the alleged unfair practice is of a continuing nature, the dates between which said continuing acts of discrimination are alleged to have occurred.

(4) **Forms.** Printed complaint forms are available at all commission offices.

(5) **Time for filing.** For claims alleging an unfair practice in a real estate transaction under RCW 49.60.222 through 49.60.225, the complaint must be filed with the commission not later than one year after the alleged unfair practice occurred or was terminated. In all other unfair practice claims, the complaint must be filed within six months after the date of occurrence of the alleged unfair practice(s). RCW 49.60.230. If the alleged unfair practice is of a continuing nature, the date of the occurrence of the unfair practice shall be deemed to be any date subsequent to the commencement of the alleged unfair act up to and including the date when the alleged unfair practice stopped.

(6) **Computation of time.** The one-year period for filing a complaint alleging an unfair practice in a real estate transaction expires at 5:00 p.m. on the day before the corresponding day of the year following the event. The six-month period for filing a complaint alleging any other unfair practice expires at 5:00 p.m. on the day before the corresponding day of the sixth month following the event. If the last day of the filing period is a Saturday, Sunday, or legal holiday, the time expires at 5:00 p.m. on the next day which is not a Saturday, Sunday, or legal holiday. For example, a complaint of an event occurring on 5 January would ordinarily have to be filed by 5:00 p.m. on 4 July, but since 4 July is a legal holiday, the time for filing the complaint would expire at 5:00 p.m. on 5 July, or at 5:00 p.m. Monday, if 5 July comes on a Saturday or Sunday.

(7) **Technical defects.** A complaint shall not be considered defective if the defect is technical and can be corrected by subsequent amendment. The statutory requirements set forth in RCW 49.60.230, including the requirement of a signature under oath, are jurisdictional and failure to comply cannot be corrected by subsequent amendment.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-08-071, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-071, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3) and 34.04.020. WSR 79-11-041 (Order 40), § 162-08-071, filed 10/12/79; Order 35, § 162-08-071, filed 9/2/77; Order 7, § 162-08-071, filed 1/19/68.]

WAC 162-08-072 Complaints issued by commission.

(1) **Who may initiate.** Complaints issued by the commission under RCW 49.60.230 (1)(b) may be initiated by the commissioners or by the executive director personally.

(2) **By commissioners.** Initiation of a complaint by the commissioners shall be by motion at a meeting. The executive director shall transcribe a carried motion from the minutes onto a paper designated "complaint," attest it with a signature, and process it.

(3) **By executive director.** The executive director may initiate a commission complaint by personally signing a document saying that the commission has reason to believe that the person shown as respondent has been engaged or is engaged in an unfair practice, identifying the nature of the unfair practice, and the facts on which it is based. The executive director shall notify each commissioner in advance of issuing a complaint, or if advance notice is not possible because of an emergency, or because a commissioner cannot be reached, or for other reason, the executive director shall give the notice as soon after issuing the complaint as possible. Any commissioner may have placed on the agenda of the next commission meeting the question of whether the complaint shall stand. If this is done, the commissioners shall vote to sustain or rescind the complaint, after such debate and deliberation as is appropriate, but without taking testimony, or hearing arguments or reports from anyone but commissioners and staff, except as the commission by vote may direct.

(4) **Basis for commission complaint.** A commission complaint may be issued when the commission "has reason to believe that any person has been engaged in an unfair practice." RCW 49.60.230(2). The basis of belief for a complaint is different from the basis for a finding under RCW 49.60.240 of "reasonable cause for believing that an unfair practice has been or is being committed." The finding of reasonable cause or not is based on the commission's own investigation and ascertainment of facts after receipt of a complaint. The basis of belief for the purpose of initiating a commission complaint is information from any source sufficient, in the judgment of the commission, to justify an investigation and finding of whether or not there is reasonable cause for believing that an unfair practice has been or is being committed.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-08-072, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-072, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-072, filed 9/2/77.]

WAC 162-08-081 Amendment of complaint prior to notice of hearing. (1) **Scope of section.** This section governs amendments of complaints prior to the time of amendment for the purpose of hearing. Amendment of a complaint for the purpose of hearing is governed by WAC 162-08-201. Amendments after notice of hearing are governed by WAC 162-08-265.

(2) **General rule.** A complaint, or any part thereof, may be fairly and reasonably amended as a matter of right at any time.

(3) **By whom.** The complaint may be amended by any of the following: The complainant, the commissioners, or the executive director or any member of the commission's staff who is authorized by the executive director to amend complaints.

(4) **Form.** Amendment of a complaint may be done by rewriting and superseding the entire text of the complaint or by filing a supplemental paper containing only the amendment.

(5) **Not necessary for finding.** The investigation pursuant to RCW 49.60.240 will cover the factual allegations and unfair practices charged in the complaint, and a reasonable cause finding will apply to all persons affected by the unfair practice(s) that is (are) found. The complainant may or may not be one of those persons. No amendment of the complaint is necessary for such a finding.

(6) **Identification of respondents.** No amendment of a complaint is necessary to make corrections in the identification of respondents in the findings of fact, if the respondents newly designated have notice of the complaint, or are given notice of the complaint, or reasonably should have known of the complaint. The findings of fact may correct the names or identification of respondents by substituting correct names, by adding persons as respondents, or by deleting persons as respondents.

(7) **Findings supersede complaint.** The findings supersede the complaint in identifying the unfair practices and persons before the commission in the case, and continue to do so until and unless an amended complaint for purposes of hearing is filed under WAC 162-08-201.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-081, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-081, filed 9/2/77; Order 7, § 162-08-081, filed 1/19/68.]

WAC 162-08-091 Withdrawal of complaint. (1) **Consent necessary.** A complaint or any part thereof may be withdrawn only with the consent of the commission.

(2) **Form.** A request for withdrawal of a complaint must be in writing and signed by the complainant and must state in full the reasons why withdrawal is requested. Blank forms may be obtained at commission offices.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-091, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-091, filed 9/2/77; Order 7, § 162-08-091, filed 1/19/68.]

III INVESTIGATION OF COMPLAINTS—FINDINGS

WAC 162-08-093 Referral to staff. Unless the chairperson of the commission directs otherwise for a particular complaint, all complaints shall be investigated by the section of the staff designated for that purpose by the executive director, and the executive director shall have full power to assign and reassign cases for investigation by particular staff persons, and to assign and reassign staff persons to the section of the staff that investigates complaints, on a full-time or part-time basis.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-08-093, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-093, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 42.18.250, 49.60.120 and chapter 49.60 RCW. WSR 78-02-065 (Order 39), § 162-08-093, filed 1/23/78; Order 35, § 162-08-093, filed 9/2/77.]

WAC 162-08-094 Investigation. (1) **Copy of complaint to respondent.** Except as may be provided for complaints alleging an unfair practice in a real estate transaction, within a reasonably prompt time after a complaint is filed the staff shall furnish a copy of the complaint to the respondent and shall afford the respondent an opportunity to reply in writing. No error or omission in carrying out this step shall affect the validity of the complaint or prevent further processing of it.

(2) **Preliminary evaluation of complaint.** Whenever the allegations of the complaint, if true, show no basis for commission action, then the staff without further investigation may enter a finding of no reasonable cause or write a recommendation for a finding of no jurisdiction, or other appropriate disposition.

(3) **Scope of investigation.** The investigation is limited to ascertaining the facts concerning the unfair practice(s) alleged in the complaint. RCW 49.60.240.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-08-094, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-094, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-094, filed 9/2/77.]

WAC 162-08-09401 Real estate transactions—Procedures. (1) Upon the filing of a complaint alleging an unfair practice in a real estate transaction, the commission shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under RCW 49.60.230 and 49.60.2235.

(2) The staff shall, not later than ten days after such filing or the identification of an additional respondent under this subsection, serve on the respondent(s) a notice identifying the alleged unfair practice and advising such respondent of the procedural rights and obligations of respondents under this chapter, together with a copy of the complaint.

(a) A person who is not named as a respondent in the course of investigation may be joined as an additional or substitute respondent upon written notice in accordance with subsection (2) of this section.

(b) In addition to meeting the requirements of subsection (2) of this section, such notice shall state the basis for the commission's belief that the person to whom the notice is addressed is properly joined as a respondent.

(3) Each respondent may file an answer to a complaint not later than ten days after receipt of notice from the commission.

(4) Subsequent to the filing of a complaint alleging an unfair practice in a real estate transaction under RCW 49.60.222 through 49.60.225, the commission shall commence proceeding with respect to the complaint within thirty days after receipt of the complaint.

(5) The commission shall complete its investigation of an allegation of an unfair practice in a real estate transaction within one hundred days of filing a duly prepared and signed

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complaint with the commission, unless it is impracticable to do so.

(6) If the commission is unable to complete the investigation of the complaint within one hundred days of filing, commission staff will advise the parties in writing of the reasons for not completing the investigation in the time allotted.

(7) The commission shall make final administrative disposition of a complaint alleging an unfair practice in a real estate transaction within one year of the date of receipt of the complaint, unless it is impracticable to do so. If the commission is unable to do so, it shall notify the parties in writing of the reasons therefor.

(8) The commission may also investigate unfair practices in a real estate transaction to determine whether a complaint should be brought by the commission itself pursuant to RCW 49.60.230 (1)(b).

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-08-09401, filed 6/13/96, effective 7/14/96.]

WAC 162-08-09501 Methods of obtaining information¹. (1) Pursuant to RCW 49.60.140 and 49.60.240, as part of the investigative process, staff members of the commission may obtain information by one or more of the following methods: Subpoenas, oral questions, written questions and answers, requests for specific documents and records.

(2) Use of these methods is available only to commission staff. Since the investigation is an internal agency process, and not an adversarial proceeding, use of the methods for obtaining information described in subsection (1) of this section are available only to commission staff members.

(3) Scope of inquiry. Commission staff members may obtain information regarding any matter, not privileged, which is relevant to the complaint filed with the commission.

(4) Methods of obtaining information.

(a) **Subpoena and subpoena duces tecum.** Subpoenas may be issued by the chairperson of the commission, any member of the commission designated by the chairperson, the executive director, or any staff member designated by the executive director, to compel the appearance of any person to give information relevant to a complaint which is under investigation.

(i) Subpoenas may be served in any manner authorized by WAC 162-08-041 and RCW 49.60.140 for the service of papers generally.

(ii) Pursuant to RCW 49.60.170, witnesses shall be paid the same fees and mileage as are paid witnesses in the courts of this state, and by the same party who would pay if the proceeding were before a court of this state. Any person authorized to issue subpoenas who desires the attendance of a witness residing outside of the county in which attendance is desired, or more than twenty miles from the place where attendance is desired, may compel the attendance of the witness by subpoena accompanied by ten dollars, tickets or other arrangements for travel, or an appropriate mileage allowance if the witness agrees to travel by automobile, plus not less than one day's per diem at the rate specified by law for witnesses required to attend court proceedings. The executive director may order additional amounts for meals, lodging, and travel as the executive director may deem reasonable for the attendance of the witness, consistent with RCW 5.56.010 and other statutes governing allowances for witnesses in the

courts of this state, if the witness objects to the arrangements or amounts provided by the person issuing the subpoena.

(iii) The party who calls an expert witness shall pay the professional fee charged by the expert witness and all other costs of the expert's testimony. If the other party's or parties' questioning of an expert witness exceeds the time taken by the party who requested the expert, they shall reimburse the party who called the expert witness for that portion of the fee charged by the expert witness and the other costs of the expert's testimony.

(iv) Questions relating to subpoenas shall be addressed by the executive director. Motions relating to subpoenas shall be addressed by the executive director or chairperson of the commission pursuant to the procedures set forth in WAC 162-08-019.

(b) **Oral questions and answers.** Oral questions and answers may be taken in any reasonable manner at any time after a complaint has been filed with the commission, provided all parties are notified that the information may be transcribed and used as evidence in any hearing arising out of the matter under investigation.

(i) Oral questions and answers may be taken before a member of the commission's staff who is not involved in the investigation of the complaint or matter, or before a person who has been commissioned to administer oaths by the chairperson of the commission, or before any person who is a notary public.

(ii) Record of examination. Questions and answers may be recorded mechanically or video-taped.

(iii) If signature is not waived, the witness shall have five days after submission of the transcription of their answers to register desired changes and sign it, and if the witness does not sign in the time allowed, the recording official may, the officer may certify the accuracy of the transcription.

(iv) The recording officer shall certify the transcription in the manner provided in CR 30(f) and shall send or deliver the original transcript to the clerk, unsealed. The recording officer need not notify parties of the transmittal.

(v) Upon receipt of a transcription certified as above, the clerk shall examine it to verify that it has been certified, and if it has been, the clerk shall file it. A transcription that has been so filed is published and is available for any use to which a deposition may be put, except to the extent that use is limited by a protective order (see WAC 162-08-096).

(vi) Transcriptions may be used in the same manner as depositions may be used under the civil rules for superior court, particularly CR 32.

(vii) Errors and irregularities in question and answer procedure are waived unless they substantially prejudice a party and are promptly objected to.

(c) **Written questions and answers.** Any commission staff person may serve written questions and answers on any party to be answered under oath.

(i) Form. Each written question shall be followed by adequate space for the answer.

(ii) Time for answer. Written questions shall be answered within ten days after service, unless their number, together with others served by the commission within the last ten days, exceed twenty questions, in which event they shall be answered within twenty days.

(d) **Production of documents and records.** Any staff member authorized by the commission may request production of documents and records relevant to a matter under investigation and issue a subpoena duces tecum for the same material when not produced upon request.

Time for response. The party upon whom the request for production is served shall serve its written response within ten days, unless the parties have stipulated to, or the commission staff person has specified, a shorter or longer time.

¹ This section is intended to cover informal methods of obtaining information pursuant to RCW 49.60.140 and 49.60.240. When more formal methods of discovery are invoked, WAC 162-08-263 applies.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-09501, filed 11/7/89, effective 12/8/89.]

WAC 162-08-096 Protective orders. (1) Upon motion by a party or by the person from whom information is sought pursuant to WAC 162-08-09501, and for good cause shown, the chairperson of the commission may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense caused by revealing private information, or trade secrets, including all orders a court can make under CR 26(c).

(2) If a motion for a protective order is denied in whole or in part, the chairperson may, on such terms and conditions as are just, order that any party or person provide or permit information to be revealed subject to the provisions of WAC 162-08-097.

(3) The chairperson may, on such terms and conditions as are just, grant a protective order sealing the produced documents pursuant to WAC 162-04-035.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-096, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-096, filed 9/2/77.]

WAC 162-08-097 Failure to provide information. (1) **Order compelling production of information.** The chairperson of the commission is authorized to make any order that a court could make under CR 37(a), including an order awarding expenses of the motion to compel production of information pursuant to WAC 162-08-09501. The executive director, upon reasonable notice to other parties and all persons affected thereby, may obtain an order compelling production of information by motion to the chairperson of the commission. The form of the motion and the procedure for its disposition is governed by WAC 162-08-019. When taking testimony under oath, the proponent of the question may either complete or adjourn the examination before moving for an order compelling production of information.

(2) **Enforcement of an order compelling production of information.** If the party fails to comply with a subpoena compelling production of information, the matter may be turned over to counsel for the commission for enforcement of the order in superior court.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-097, filed 11/7/89, effective 12/8/89.]

WAC 162-08-098 Findings. (1) **General.** The findings document shall contain (a) *findings of fact*, and (b) an *ultimate finding* of reasonable cause or no reasonable cause for believing that an unfair practice has been or is being commit-

ted, or a finding on jurisdiction, as provided in (2) of this section.

(2) **Jurisdictional dispositions.** When the facts found show that the matter is not within the jurisdiction of the commission, the ultimate finding shall be "no jurisdiction" rather than "reasonable cause" or "no reasonable cause." In extraordinary circumstances where the commission technically has jurisdiction but for overriding reasons of law or policy is unable to properly exercise its jurisdiction, the ultimate finding may be "jurisdiction declined." An example of such an extraordinary circumstance is a complaint against the commission itself.

(3) **Scope of reasonable cause finding.** A finding of reasonable cause shall specify the unfair practice found and, as nearly as possible, the person or persons against whom the unfair practice has been committed. If the facts show an unfair practice against a class of persons, the class shall be indicated to the extent possible.

(4) **Action by commissioners.** Findings of no reasonable cause shall be reported to the commissioners at a meeting, and shall thereafter stand as the action of the commission unless the commissioners vote to set aside a particular finding. Findings of reasonable cause shall be used by the staff for the purpose of endeavoring to eliminate the unfair practices by conference, conciliation, and persuasion. Proposed findings of "no jurisdiction" or "jurisdiction declined" shall be reported to the commissioners and shall become commission action when approved by vote of the commissioners at a meeting.

(5) **Effect of findings.** A finding that there is or is not reasonable cause for believing that an unfair practice has been or is being committed is not an adjudication of whether or not an unfair practice has been or is being committed.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-098, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-098, filed 9/2/77.]

WAC 162-08-099 Termination of a case without findings of fact. (1) **Authorized.** The commission in appropriate circumstances may terminate its action on a case without making findings of fact pursuant to RCW 49.60.240. This section provides procedures in some of the circumstances.

(2) **Withdrawal of complaint.** No findings or other procedures in RCW 49.60.240 and 49.60.250 are necessary when the complainant has requested withdrawal of the complaint and the commissioners have consented to the withdrawal pursuant to WAC 162-08-091.

(3) **Settled before finding.** Except as may be otherwise provided for a complaint alleging an unfair practice in a real estate transaction, a complaint may be settled before findings of fact are made, when the commission's staff and a respondent have entered into a written settlement agreement (prefinding settlement). Prefinding settlement agreements shall be presented to the commissioners. The commissioners, if they approve, shall enter an order setting forth the terms of the agreement, using the same procedure as if the agreement were presented to the commissioners under RCW 49.60.240 and WAC 162-08-106 after findings of fact. A prefinding settlement is not binding on the commission until the commissioners vote to accept it and issue their order.

(4) **Administrative closure.** A case may be administratively closed by vote of the commissioners when the com-

plaint has been resolved informally, or has been adjudicated in another forum, or has become moot, or cannot be investigated because the complainant or respondent cannot be found, or when other circumstances justify administrative closure. Administrative closure is an official termination of work on a complaint prior to completion of the entire statutory process, letting the complaint lie in its present posture. A case that has been administratively closed can be administratively reopened by vote of the commissioners.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-08-099, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-099, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-099, filed 9/2/77.]

WAC 162-08-101 Reconsideration of findings. The commission may reconsider and correct any finding in which errors affecting the result are brought to its attention.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-101, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-101, filed 9/2/77; Order 7, § 162-08-101, filed 1/19/68.]

IV CONCILIATION

WAC 162-08-102 Objective of conciliation. The commission's staff in its endeavors to eliminate an unfair practice by conference, conciliation and persuasion under RCW 49.60.250 shall be guided by the purposes of the law against discrimination and by the policies and objectives of the commission, particularly as expressed in WAC 162-08-061, 162-08-062 and 162-08-298. Elimination of an unfair practice includes elimination of the effects of the unfair practice, as well as assurance of the discontinuance of the unfair practice.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-08-102, filed 6/13/96, effective 7/14/96; Order 35, § 162-08-102, filed 9/2/77.]

WAC 162-08-104 Conciliation negotiations. (1) **Endeavors of staff.** Except as may be otherwise provided for a complaint alleging an unfair practice in a real estate transaction, the task of the commission is to endeavor to eliminate the unfair practice through agreement with the respondent. The extent of effort to be expended toward this end will depend on the likelihood that agreement on mutually acceptable terms can be reached. If, for example, it is apparent from an exchange of letters that agreement cannot be reached, it is not necessary to hold a conference. If a respondent has been afforded a reasonable opportunity to negotiate, that is sufficient to satisfy the statutory requirements pertaining to conciliation of a complaint brought under chapter 49.60 RCW and this chapter.

(2) **Reopening conciliation.** The making and service of a finding that no agreement can be reached does not preclude renewing negotiations or reaching an agreement at a later time. The finding that no agreement can be reached is not affected by a renewal of negotiations, but it may be superseded by any subsequent agreement which resolves the unfair practices at issue in the complaint filed with the commission.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-08-104, filed 6/13/96, effective 7/14/96; Order 35, § 162-08-104, filed 9/2/77.]

WAC 162-08-106 Approval of agreements. Except as may be otherwise provided for a complaint alleging an unfair practice in a real estate transaction, an agreement reached between the commission's staff and a respondent under RCW 49.60.240 shall be reduced to writing, signed by the respondent and a member of the commission's staff, and presented to the commissioners at a meeting. The agreement is not binding on the commission until the commissioners vote to accept it.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-08-106, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-106, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-106, filed 9/2/77.]

WAC 162-08-107 Real estate transactions—Conciliation. During the period beginning with the filing of a complaint of an unfair practice in a real estate transaction and ending with the filing of a charge or a dismissal by the commission, the commission shall, to the extent feasible, engage in conciliation with respect to the complaint.

(1) An agreement arising out of conciliation efforts under this section shall be an agreement between the respondent and the complainant, and shall be subject to approval by the commission.

(2) Each conciliation agreement shall be made public unless the complainant and respondent agree otherwise and the commission determines that disclosure is not necessary to further the purposes of chapter 49.60 RCW.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-08-107, filed 6/13/96, effective 7/14/96.]

WAC 162-08-109 Breach of conciliated agreement. If an agreement and order for the elimination of an unfair practice made under RCW 49.60.240 is breached, the executive director may take action appropriate in the circumstances, including one or more of the following:

(1) **Specific enforcement.** Bringing an action in superior or district court for specific enforcement of the agreement, or for damages pursuant to the conciliation agreement;

(2) **Setting aside.** Recommending to the commissioners that the agreement and order be set aside, in whole or in part, and that the case be returned to the staff for renewed conference, conciliation and persuasion, or to be referred to commission counsel for hearing; or

(3) **Report to prosecuting attorney.** Reporting the violation to the appropriate prosecuting attorney for prosecution under RCW 49.60.310.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-109, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-109, filed 9/2/77.]

V

ADMINISTRATIVE HEARINGS BEFORE AN ADMINISTRATIVE LAW JUDGE

WAC 162-08-190 Certification of file. (1) **General.** Certification of the file to the chairperson as provided in RCW 49.60.250 in case of failure to reach an agreement under RCW 49.60.240 for the elimination of an unfair practice shall be done in the manner provided in this section.

(2) **Who certifies.** Certification shall be done by the clerk.

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(3) **Form of certificate.** The certificate shall be in writing and dated and signed by the clerk and shall be in substantially the following form: "I certify that the attached is the entire file, including the complaint and all findings made, of the Washington state human rights commission staff for the complaint included in the file."

(4) **Custody of file.** The certified file, including the certificate, shall be held in the custody of the clerk, who shall see that it is available for use by the chairperson of the commission and counsel for the commission, and for examination and copying by others.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-190, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-190, filed 9/2/77.]

WAC 162-08-201 Prehearing amendment of complaint. (1) **Required.** Before a case is noted for hearing, counsel for the commission shall prepare an amended complaint as provided in this section in accordance with RCW 49.60.250(1).

(2) **Basis for.** The amended complaint shall be based on the facts as they are believed by the commission's counsel and staff to exist at the time the amended complaint is signed.

(3) **Scope.** The amended complaint shall identify the persons who are proper parties for the hearing and the matters to be heard. It need not be limited to parties or matters mentioned in the complaint filed under RCW 49.60.230, and it need not include all parties or matters mentioned in that complaint.

(4) **Form.** The complaint shall be in the form designated in WAC 162-08-241.

(5) **Contents.** The amended complaint shall contain the following:

(a) Identification of the specific unfair practice or practices alleged.

(b) A short and plain statement of the factual allegations which form the basis for the alleged unfair practices.

(c) A request for relief, setting out the terms or substance of the order which the executive director believes would be appropriate for the administrative law judge to enter if the matters alleged in the complaint are proven to be true.

(6) **Pleading statutory steps.** It is not necessary for counsel for the commission to plead that the statutory steps prior to the amended complaint have been completed. All statutory steps prior to hearing will be deemed to have been properly completed unless an issue is raised by specific negative averment in an answer as provided in WAC 162-08-251(7).

(7) **Signing.** The amended complaint shall be signed by counsel for the commission and verified by the executive director or a staff member designated by the executive director to verify on behalf of the executive director.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-201, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-201, filed 9/2/77; Order 7, § 162-08-201, filed 1/19/68.]

WAC 162-08-211 Appointment of administrative law judge. When appointed. When the file has been certified (WAC 162-08-190) and counsel for the commission has prepared an amended complaint for hearing (WAC 162-08-201) the chairperson of the commission shall request the appoint-

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ment of an administrative law judge as provided in RCW 49.60.250 and this section.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-211, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-211, filed 9/2/77; Order 33, § 162-08-211, filed 3/21/77; Order 7, § 162-08-211, filed 1/19/68.]

WAC 162-08-221 Notice of hearing. (1) **Applicable statutes.** When an administrative law judge has been appointed, the clerk shall give notice of hearing to all parties as provided in RCW 49.60.250 and 34.05.434.

(2) **Indefinite time.** The clerk may, in his or her discretion, omit the time and place of hearing from the notice with the explanation that the time and place will be set by later notice from the administrative law judge, given at least twenty days in advance of the time of hearing.

(3) **Issues.** The notice of hearing shall state that the issues involved in the hearing are (a) whether the respondent committed the unfair practices stated in the amended complaint, and, if so, (b) what order is appropriate. A copy of the amended complaint shall be attached to the notice of hearing.

(4) **Notice of rules.** The notice of hearing shall inform the respondent of the answer rule, WAC 162-08-251, and it shall inform the complainant of a complainant's rights and options under WAC 162-08-261.

(5) **Consolidation of cases.** The administrative law judge may consolidate cases when they involve common questions of law or fact.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-221, filed 11/7/89, effective 12/8/89; Order 37, § 162-08-221, filed 10/27/77; Order 35, § 162-08-221, filed 9/2/77; Order 7, § 162-08-221, filed 1/19/68.]

WAC 162-08-231 Record, pleadings. (1) **Record.** The record of an administrative hearing shall include the items specified in RCW 34.05.437, including, but not limited to:

(a) All pleadings, motions, briefs, proposed findings of fact and conclusions of law and initial or final orders, objections, but not offers of settlement (RCW 49.60.250(2));

(b) Evidence received or considered;

(c) A statement of matters officially noticed;

(d) Any decision, opinion, or report by the officer presiding at the hearing.

(2) **Pleadings.** Pleadings for an administrative hearing shall include the notice of hearing with amended complaint attached and any amended complaints subsequently filed, plus any answers or replies filed under WAC 162-08-251, and the original complaint if, but only if, the complainant elects to proceed under it as provided in WAC 162-08-261.

(3) **Proceedings before notice of hearing not part of record.** No findings or other parts of the commission's record of action on the complaint prior to notice of hearing shall be included in the record of the administrative hearing unless the particular document is offered and admitted into evidence.

(4) **Custody.** The clerk shall keep custody of the official record of the administrative hearing as provided in WAC 162-04-026 (3)(h) and shall keep the administrative law judge file separate from the file of the original complaint, investigation, and conciliation, of which the clerk has custody under WAC 162-04-026 (3)(d) and 162-08-190.

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(5) **Record for appeal.** The record certified to the court for the purpose of judicial review under RCW 34.05.510 et seq. shall comply with RCW 34.05.566.

(6) **Record for enforcement.** The record to be filed in an enforcement proceeding shall include the final order of the administrative law judge and any other portions of the record required by the court.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-231, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-231, filed 9/2/77; Order 7, § 162-08-231, filed 1/19/68.]

WAC 162-08-241 Form of papers filed with administrative law judge. (1) **Caption.** The notice of hearing shall include a full caption in substantially the following form:

BEFORE THE ADMINISTRATIVE LAW JUDGE
FOR A HUMAN RIGHTS COMMISSION HEARING

WASHINGTON STATE HUMAN RIGHTS
COMMISSION, PRESENTING THE CASE
IN SUPPORT OF THE COMPLAINT OF
JAMES DOE, complainant,

..... V.

ROE ENTERPRISES, INC., PHYLLIS
ROE, PRESIDENT, AND RICHARD
ROE, SECRETARY, respondent(s).

.....

NO.

Papers filed thereafter may have a short caption in substantially the following form:

BEFORE THE ADMINISTRATIVE LAW JUDGE
FOR A HUMAN RIGHTS COMMISSION HEARING

WASHINGTON STATE HUMAN RIGHTS COM-
MISSION *EX REL.* DOE, complainant,

..... V.

ROE ENTERPRISES, INC., *ET AL.*,
respondent(s)

.....

NO.

(2) **Form in general.** Papers filed with an administrative law judge shall be in the form used for superior court practice. See in particular Rule 10, civil rules for superior court.

(3) **Signing.** Every pleading, motion or other paper filed on behalf of a party represented by an attorney shall be dated and signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall similarly date and sign proceedings, motions and other papers and give the party's address. The signature of a party or of an attorney constitutes a certificate by that person in accordance with the provisions of Rule 11, civil rules for superior court.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-241, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-241, filed 9/2/77; Order 7, § 162-08-241, filed 1/19/68.]

WAC 162-08-251 Answer. (1) **Required.** Every respondent shall file an answer to the amended complaint attached to the notice of hearing, and to any subsequent amendments or complaints that are filed.

(2) **Content.** The answer shall set out and assert every defense, in law or fact, to the claims of the complaint being answered.

(3) **Waiver of defenses not pleaded.** Defenses not pleaded in an answer are waived.

(4) **Time for filing.** An answer shall be filed within twenty days after notice of hearing is served, unless an extension of time is granted in writing by the administrative law judge.

(5) **Form of defenses and denials.** A respondent shall state in short and plain terms its defenses to each claim asserted and shall admit or deny each averment of the amended complaint. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an averment, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a respondent intends in good faith to deny only a part or a qualification of an averment, the respondent shall specify so much of it as is true and material and shall deny only the remainder.

(6) **Affirmative defenses.** A respondent who wishes to raise any matter constituting an avoidance or affirmative defense, including those required to be set forth affirmatively by CR 8(c), must plead the matter as an affirmative defense in the respondent's answer. Among the matters which must be pleaded as affirmative defenses are the following:

(a) A bona fide occupational qualification;

(b) Business necessity that justifies a practice that has a discriminatory effect; and

(c) That another statute or rule of law precludes or limits enforcement of the law against discrimination, or regulations or precedents of the commission.

(7) **Statutory steps.** Any defense that the hearing cannot be held because the respondent has been prejudiced because statutory steps prior to hearing have not been taken, or because of some irregularity in statutory procedure, must be pleaded in the answer by specific negative averment, which shall include such supporting particulars as are within the answering respondent's knowledge or could reasonably have been learned by the answering respondent.

(8) **Obligation of good faith.** The assertion of denials and defenses is subject to the obligation of good faith set out in WAC 162-08-241(3) and CR-11.

(9) **Reply.** Unless the administrative law judge orders that a reply to an answer be filed, none shall be necessary. Averments in an answer shall be deemed denied or avoided.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-251, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-251, filed 9/2/77; Order 7, § 162-08-251, filed 1/19/68.]

WAC 162-08-253 No counterclaims or cross claims. Jurisdiction of the administrative law judge is limited to determining whether unfair practices have occurred, and counterclaims and cross claims will not be heard.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-253, filed 11/7/89, effective 12/8/89.]

WAC 162-08-255 Default order. (1) **Entry of default order.** When a respondent who has been served with a notice of hearing and amended complaint fails to answer in accordance with WAC 162-08-251, and that fact is made to appear by motion and affidavit, a motion for default may be made and served upon respondent requiring an answer within five days. If respondent fails to answer as required in the motion for default, the administrative law judge may enter an order of default providing for the relief requested in the amended complaint upon proof of service of the motion for default as provided in WAC 162-08-041.

(2) **Setting aside default order.** Within ten days of being served, the party against whom a default order is entered may move to have it set aside. The administrative law judge may grant or deny such motion as justice requires.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-255, filed 11/7/89, effective 12/8/89.]

WAC 162-08-261 Complainant's participation. (1) **Notice of independent appearance.** A complainant or aggrieved person under RCW 49.60.040(15) who desires to submit testimony or otherwise participate in the hearing as a party and not to leave the case in support of the complaint to be presented solely by counsel for the commission, must serve and file a notice of independent appearance within ten days after the notice of hearing is served on that complainant. The notice shall state the address where notices to the complainant shall be sent and it shall state whether the complainant elects to prove additional charges as provided in subsection (2) of this section.

(2) **Election to prove additional charges.** A complainant or aggrieved person under RCW 49.60.040(15) who has filed a notice of independent appearance stating an intention to prove additional charges in accordance with RCW 49.60.250(2), may at the hearing offer proof of averments included in the original complaint or in amendments to the original complaint made by the complainant, whether or not the averments are included in the amended complaint under which counsel for the commission is proceeding. For purposes of this section, the complainant may amend the original complaint without regard to intervening amendments made by the commission. The complainant may serve and file an amended complaint with a notice of independent appearance, or thereafter as provided by these rules. If no amended complaint is served with a notice of independent appearance that states an intention to prove additional charges, the clerk shall promptly place the original complaint in the file for the administrative law judge. Nothing done by the complainant under this rule shall place any duty on counsel for the commission to seek to prove matters not averred in the amended complaint accompanying the notice of hearing, or subsequent amendments by the commission.

(3) **Appearance without election.** If the complainant or aggrieved person under RCW 49.60.040(15) files a notice of independent appearance which does not state that he or she elects to prove additional charges, then the complainant's participation in the hearing shall be confined to the matters raised by the amended complaint filed with the notice of hearing, and subsequent amendments made by the commission.

(4) **When no independent appearance.** If the complainant or aggrieved person under RCW 49.60.040(15) does not file a notice of independent appearance as provided by this rule, the case in support of the complaint shall be presented solely by counsel for the commission.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-08-261, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-261, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-261, filed 9/2/77; Order 7, § 162-08-261, filed 1/19/68.]

WAC 162-08-263 Discovery—Administrative hearing. The commission has determined that discovery will be available in adjudicative proceedings in accordance with RCW 34.05.446(2).

(1) **Methods.** Upon certification of the file pursuant to WAC 162-08-190, and request for the appointment of an administrative law judge pursuant to WAC 162-08-211, any party may obtain discovery by the methods provided in CR 26(a). The procedures regarding these methods of discovery are found at CR 28 through 37 as now or hereafter amended and are hereby incorporated in this section.

(2) **Scope of discovery.** Any party may obtain discovery regarding any matter not privileged which is relevant to the amended complaint prepared by counsel for the commission or the additional charges filed by the complainant pursuant to WAC 162-08-261.

(3) **Protective order.** Rulings on motions for protective orders regarding discovery brought under this section shall be made by the administrative law judge pursuant to the provisions of WAC 162-08-271.

(4) **Order compelling discovery.** The administrative law judge is authorized to make any order that a court could make under CR 37(a), including an order awarding expenses of the motion to compel discovery. Motions for an order compelling discovery and the procedure for its disposition are governed by WAC 162-08-271.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-263, filed 11/7/89, effective 12/8/89.]

WAC 162-08-265 Amendment of pleadings. (1) **Right to amend.** A party to an administrative hearing may amend a pleading once as a matter of course at any time more than twenty days before the date set for hearing. Otherwise, a party may amend a pleading only by leave of the administrative law judge or by written consent of all adverse parties.

(2) **Action on motions to amend.** The administrative law judge shall freely give leave to amend when justice so requires. The administrative law judge may designate a time for filing an answer to amended pleadings that may be answered, and may reschedule other dates, including the hearing date, if this is necessary to assure that issues for hearing are fully and properly framed.

(3) **Form of amendment.** An amendment other than one made on the record during a hearing must be in writing. A written amendment may be in the form of either a revised pleading superseding the entire text of the amended pleading, or a supplemental paper containing only the amendment.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-265, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-265, filed 9/2/77.]

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WAC 162-08-268 Voluntary dismissal. (1) **Prior to day of hearing.** Except as may be provided for cases alleging unfair practices in real estate transactions, on the day when the hearing of a case commences the commission or any other party on the side supporting the complaint may voluntarily dismiss the party's case or a claim by serving and filing a written notice of dismissal.

(2) **After hearing commenced.** Except as may be provided for cases alleging unfair practices in real estate transactions, after a hearing has commenced the commission or any other party on the side supporting the complaint may move for voluntary dismissal of the party's case or a claim. A motion that is made before the party rests at the conclusion of its opening case shall be granted as a matter of right. A motion made after that time may be granted if good cause is shown, and the grant may be subject to such terms and conditions as the administrative law judge deems proper.

(3) **Effect of dismissal.** A voluntary dismissal concludes the administrative proceeding as to the dismissed party or claim, but is not an adjudication of the merits of the issues before the administrative law judge (that is, the merits may still be adjudicated in another forum if the party has a right to sue in another forum and timely files such claim with the other forum). A voluntary dismissal of one claim does not extinguish any other claim, and a voluntary dismissal by one party does not dismiss any other party. If the commission takes a voluntary dismissal of the case in support of the complaint the entire case is closed, unless the complainant has appeared independently under WAC 162-08-261 or another person has intervened as a party on the side of the complaint pursuant to WAC 162-08-288(4), in which circumstance the hearing shall proceed with the remaining parties.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-08-268, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-268, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-268, filed 9/2/77.]

WAC 162-08-271 Motions before administrative law judge. (1) **Scope of section.** This section governs all motions made to the administrative law judge except those made orally on the record during an administrative hearing.

(2) **Form.** A motion must be in writing. It must state the order or other relief requested and the grounds for the motion. It may be accompanied by affidavits. It must be supported by legal authorities, set out in the motion or in a supporting brief.

(3) **Response.** Any party may serve and file a response within five days after the motion has been served on that party.

(4) **Filing.** The original and one copy of every motion and response, with supporting papers, must be filed with the clerk, along with proof of service.

(5) **Ruling.** When the administrative law judge has received a response from all parties, or five days have elapsed since the last party was served, the administrative law judge shall rule on the motion without oral argument, unless the administrative law judge, in his or her discretion, orders that argument be heard.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-271, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-271, filed 9/2/77; Order 7, § 162-08-271, filed 1/19/68.]

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WAC 162-08-282 Summary judgment. (1) **Authorized.** At any time prior to the tenth day before the date of a hearing, any party may serve and file a motion for summary judgment in the party's favor as to all or part of the case.

(2) **Procedure.** The usual procedure for motions made before an administrative law judge, WAC 162-08-271, shall apply except where this section provides a different procedure.

(3) **Response.** Any party may serve and file opposing affidavits and a response, or either of these, within seven days after the motion for summary judgment has been served on that party.

(4) **When decided.** The administrative law judge shall decide a motion for summary judgment promptly after ten days have elapsed since the motion was filed with the administrative law judge.

(5) **Oral argument optional.** Oral argument shall be heard only if ordered by the administrative law judge.

(6) **What is decided.** The administrative law judge's final order shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, and other documents and evidence properly before the administrative law judge, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of whether an unfair practice has been committed although there is a genuine issue as to the amount or nature of relief to be ordered. Otherwise, summary judgment shall be denied.

(7) **Orders when case not fully adjudicated on motion.** If summary judgment is not ordered for the whole case or for all of the relief asked and a hearing is necessary, the administrative law judge shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. The administrative law judge may summon counsel for all parties and interrogate them for this purpose. The administrative law judge shall then make an order specifying the facts that appear without substantial controversy, including the extent to which the amount or nature of relief is not in controversy, and directing such further proceedings as are just. At the hearing, the facts so specified shall be deemed established, and the hearing shall be conducted accordingly.

(8) **Form of affidavits; further testimony.** Supporting and opposing affidavits must be made on personal knowledge, must set forth facts that would be admissible in evidence, and must show affirmatively that the affiant is competent to testify to what is stated. Sworn or certified copies of all papers or parts of papers referred to in an affidavit shall be attached to the affidavit or served with it. The administrative law judge may permit affidavits to be supplemented or opposed by depositions or by further affidavits.

(9) **When affidavits are unavailable.** Should it appear from the affidavits of a party opposing the motion that the party cannot, for reasons stated, present by affidavit facts essential to justify the party's opposition, the administrative law judge may refuse the motion, or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had, or the administrative law judge may issue such other order as is just.

(10) **Affidavits made in bad faith.** Should it appear to the satisfaction of the administrative law judge at any time that any of the affidavits were presented in bad faith or solely for the purpose of delay, the administrative law judge shall order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the party to incur, including reasonable attorney's fees. The administrative law judge shall include this order in the final order.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-282, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-282, filed 9/2/77.]

WAC 162-08-286 Prehearing conference. (1) **Conference.** The administrative law judge, as a matter of discretion, with or without a motion from a party, may direct the attorneys for the parties to appear before the administrative law judge for a conference to consider:

- (a) The simplification of the issues;
- (b) The necessity or desirability of amendments to the pleadings;
- (c) The possibility of obtaining admissions of fact and of documents which will be premarked for admission into evidence in order to avoid unnecessary proof;
- (d) The limitation of the number of expert witnesses; and
- (e) Other matters that may aid in the disposition of the case.

(2) **Order.** The administrative law judge shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements of counsel. The order when served and filed controls the subsequent course of the case, unless it is modified at the hearing to prevent manifest injustice.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-286, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-286, filed 9/2/77.]

WAC 162-08-288 Parties. (1) **Who are parties.** The parties to the hearing shall be the commission, through its counsel presenting the case in support of the complaint, a complainant or aggrieved person under RCW 49.60.040(15) who has filed a notice of independent appearance under WAC 162-08-261, the respondent or respondents named in the notice of hearing or an amended notice of hearing, and any other person who moves to intervene and is permitted to do so by order of the administrative law judge.

(2) **Adding parties.** Any party may move to join an additional party or parties. The motion must be directed to the administrative law judge. If the motion is granted, the administrative law judge shall cause to be issued an amended notice of hearing showing the addition of the party or parties and making such other provisions as are appropriate for an orderly hearing.

(3) **Substituting parties.** If death, incompetency, transfer of interest, or other occurrence should make the substitution of parties necessary or desirable, the administrative law judge may make the substitution by order. The administrative law judge may act on his or her own motion, or on motion of a party or of the person asking to be substituted for a party.

(4) **Intervention.** A person claiming an interest in the subject matter of the hearing may move to intervene. The

motion must be directed to the administrative law judge. The administrative law judge shall grant or deny the motion as a matter of discretion.

(5) **Factors considered.** The administrative law judge in ruling on a motion to add a party shall be guided by whether the presence of the party will be helpful in carrying out the purposes of the law against discrimination (compare WAC 162-08-061). In addition, the administrative law judge shall consider whether adding the party will cause unnecessary delay or will divert the hearing from the objectives of the statute and of the commission's amended complaint. The administrative law judge need not follow court rules or precedents on the joinder of parties.

(6) **Not class actions.** Hearings under RCW 49.60.250 are not class actions, in the technical sense of that term in court practice. The commission, presenting the case in support of a complaint, may ask that a respondent be ordered to pay back pay or to afford other relief to all persons injured by an unfair practice, and the administrative law judge may issue such an order to carry out the purposes of the law against discrimination (WAC 162-08-298(6)). If such an order is made, the right to have the payments made will belong to the commission, not to the injured persons (WAC 162-08-305). The legal rights of persons of the class alleged to have been injured are not at issue in the case, and those persons are not bound by the administrative law judge's decision unless they accept the benefits of it in full satisfaction of their potential claims. Only the commission and the respondent and other persons named as parties are bound by the order of an administrative law judge.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-08-288, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-288, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-288, filed 9/2/77.]

VI

ADMINISTRATIVE HEARING AND DECISION

WAC 162-08-291 Conduct of hearings. (1) **Reference to law.** Hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW, RCW 49.60.250, and these rules.

(2) **Administrative law judge presides.** The administrative law judge shall preside as provided in WAC 162-08-211.

(3) **Hearings shall be public.** All administrative hearings shall be open to the public. Photographs and recordings of the proceedings may be made, subject to such conditions as the administrative law judge may impose to prevent interference with the orderly conduct of the hearing. Special lighting for photographic purposes may be used only if the administrative law judge has determined in advance that it will not be distracting. The administrative law judge may order news media to use one or more television cameras on a pooling basis if the number of cameras interferes with the conduct of the hearing.

(4) **Record of testimony.** The clerk shall determine whether the record of testimony taken at a hearing shall be made by mechanical means or by a court reporter.

(5) **Copies of record.** When the record has been recorded by mechanical means, rather than by a court

reporter, a party ordering a copy of the record or part thereof under RCW 34.05.566 must pay the reasonable cost of transcription, as determined by the clerk, in advance of delivery of the copy. When the record is transcribed and copies of documents are made for transmittal to a reviewing court under RCW 34.05.566, the costs of transcription and copying may be charged to a nonindigent petitioner in accordance with RCW 34.05.566(3).

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-291, filed 11/7/89, effective 12/8/89; Order 38, § 162-08-291, filed 10/27/77; Order 35, § 162-08-291, filed 9/2/77; Order 7, § 162-08-291, filed 1/19/68.]

WAC 162-08-292 Evidence. (1) **General rules on admissibility.** Administrative law judges shall admit and give probative effect to evidence that is admissible in the superior courts of the state of Washington in a nonjury trial. In addition, an administrative law judge may admit and give probative effect to other evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Administrative law judges shall give effect to the rules of privilege recognized in the courts of this state. Administrative law judges may exclude irrelevant, immaterial, and unduly repetitious evidence.

(2) **Identification of exhibits.** All exhibits requested by any party shall be identified by a single series of numbers, in the order that the proposed exhibits are marked for identification. The numbers may be preceded by code letters indicating the acting party, including "C" for the commission, and "R" for a respondent. *Example:* The first exhibit, marked at the request of the commission, is C1. The second exhibit, if offered by a respondent, is R2, whether or not C1 was admitted.

(3) **Stipulations encouraged.** Counsel are requested to mark proposed exhibits in advance of hearing and to stipulate to the admission of all exhibits that will not be objected to.

(4) **Copies of documents and exhibits.** Unless excused from doing so by the administrative law judge, a party offering a document or other exhibit in evidence must furnish copies to all other parties.

(5) **Official notice.** The administrative law judge may take notice of judicially cognizable facts, and in addition may take notice of general, technical, or scientific facts within his or her specialized knowledge. Any party may, by motion, ask the administrative law judge to take official notice of facts or material. When the administrative law judge takes official notice of any facts or material, the administrative law judge must notify the parties of what is noticed and afford them reasonable opportunity to contest the noticed facts. This may be done at any time before the administrative law judge's order becomes final.

(6) **Evaluation of evidence.** The administrative law judge's findings of fact shall be based exclusively on the evidence presented at the administrative hearing and on matters officially noticed, but the administrative law judge may utilize his or her experience, technical competence, and specialized knowledge in evaluating the evidence.

(7) **Efforts at conciliation excluded.** Any endeavors or negotiations for conciliation made under RCW 49.60.240 shall not be received in evidence as proof of whether or not an unfair practice was committed. RCW 49.60.250(2). If a respondent denies that the statutory step of endeavoring to

eliminate the unfair practice by conference, conciliation, and persuasion took place, then evidence of whether such endeavors were made may be admitted, but the contents and details of offers, counteroffers, and discussions shall be excluded to the maximum extent possible. The commission's findings made pursuant to RCW 49.60.240 are prima facie evidence that the investigation, conciliation, and other statutory steps have been taken. In addition, offers of settlement or compromise and statements made in settlement or compromise negotiations, at any stage of the case, are privileged from use as proof of whether or not an unfair practice was committed. Evidence of such an offer or statement shall be excluded upon claim of the privilege by the party that made the offer or statement.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-292, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-292, filed 9/2/77.]

WAC 162-08-294 Claims of self incrimination—Immunity. (1) **How claimed.** A natural person who is testifying under oath, may, instead of answering a question, decline to answer the question on the ground that the testimony or evidence required of him or her may tend to incriminate him or her or subject him or her to a penalty or forfeiture.

(2) **Procedure before compelling testimony.** Before compelling testimony after the privilege against self incrimination has been invoked (and thereby exempting the witness from prosecution) the administrative law judge shall ask examining counsel and also counsel for the commission to state their positions on whether the witness should be ordered to answer. Counsel for the commission may ask that the ruling be deferred for such time as is necessary for counsel for the commission to consult with other public officers before responding. The position of counsel for the commission and other public officers shall be given due weight by the administrative law judge in deciding whether to order the witness to answer.

(3) **Inference from silence after immunity acquired.** If the witness declines to answer the question after acquiring exemption from prosecution, the administrative law judge may consider the silence as evidence and may draw such inferences from it as are warranted by the facts surrounding the incident.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-294, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-294, filed 9/2/77.]

WAC 162-08-298 Remedies. (1) **Power of administrative law judge.** The administrative law judge has the power to exercise the general jurisdiction of the commission to eliminate and prevent discrimination by means of orders to respondents who have been found after hearing to have engaged in an unfair practice or practices.

(2) **General objectives.** An order should generally both eliminate the effects of an unfair practice and prevent the recurrence of the unfair practice. The effects of an unfair practice are eliminated by restoring the victims of the unfair practice as nearly as possible to the position they would have been in if the unfair practice had not occurred. It is appropriate to eliminate the effects of the unfair practice on persons other than the complainant or complainants, and to consider the deterrent effect of an order on persons other than the

respondent or respondents. The objective of the law is to eliminate and prevent discrimination, not merely to provide treatment for victims of discrimination.

(3) **Cease and desist.** In every case where the administrative law judge finds that a respondent has engaged in an unfair practice the administrative law judge shall order the respondent to cease and desist from that unfair practice.

(4) **Examples of remedies.** Included among remedies that will effectuate the purposes of the law against discrimination in an appropriate case are the following:

(a) An order to hire persons who have been unfairly denied employment;

(b) An order to reinstate persons who have been unfairly terminated, downgraded, or reclassified;

(c) An order to upgrade persons who have been unfairly denied promotion;

(d) An order to pay back pay to a person or persons who would have had a job but for the unfair practice of the respondent;

(e) An order to pay an amount equal to the difference in pay between the job the persons had and the job they would have had but for the unfair practice of the respondent;

(f) An order restoring employment benefits, such as insurance benefits, retirement contributions, sick leave, vacation benefits, seniority standing, etc., lost or not gained because of an unfair practice;

(g) An order to admit persons to membership in a union which has unfairly excluded the persons and dispatch them to jobs in accordance with uniform rules applicable to all members;

(h) An order to merge or otherwise restructure a seniority system that unfairly disadvantages a protected class of persons;

(i) An order to rent or sell real property to persons who have been unfairly denied the property;

(j) An order to grant credit to persons who have been unfairly denied credit;

(k) An order to reimburse or compensate persons for the excess cost of credit caused by an unfair practice;

(l) An order to issue or renew insurance to persons who have been unfairly denied the insurance;

(m) Except as may be provided for complaints of unfair practices in real estate transactions, an order to pay a sum of money of up to ten thousand dollars to compensate persons for humiliation and mental suffering caused by an unfair practice;

(n) An order assessing a civil penalty against the respondent as authorized by RCW 49.60.225 (1) and (2);

(o) An order to pay interest on money that should have been paid at an earlier time, but for the unfair practice. Interest may be calculated at the current market rate for unsecured personal loans from institutions other than small loan companies licensed under chapter 31.08 RCW;

(p) An order to not retaliate against a complainant, witness, or other person for filing a complaint, testifying, or assisting in any proceeding under chapter 49.60 RCW;

(q) An order to institute affirmative programs, practices, or procedures that will eliminate an unfair practice or its effects, or will prevent the recurrence of the unfair practice;

(r) An order for any other remedy which is available under comparable civil rights laws of the United States or

other states, including the federal Fair Housing Amendments Act of 1988, 42 U.S.C. sec. 3601 et seq.

This list is not exhaustive. An administrative law judge may make any order that will effectuate the purposes of the law against discrimination, provided the order is in compliance with the rules of the commission and is not otherwise prohibited by law.

(5) **Remedies not authorized.** Except as may be otherwise provided for a complaint alleging an unfair practice in a real estate transaction, an administrative law judge is not authorized to order:

- (a) The payment of punitive damages;
- (b) The payment of fines payable to the state.

(6) No order effectuating the law against discrimination in real estate transactions shall affect any contract, sale, encumbrance, or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer or tenant without actual notice of the complaint filed under this chapter.

(7) **Treatment of unemployment compensation.** When an order is made for payment of wages lost during a time when the beneficiary of the order was receiving unemployment compensation, the amount of the award shall not be reduced by the amount of unemployment compensation received. The order may make provision for payment of the portion of the award covered by unemployment compensation jointly to the beneficiary and the Washington state department of employment security, or to the department alone. (Under Washington law, it is the duty of the employee to reimburse the department of employment security when back pay is received for a period during which the employee collected unemployment compensation.)

(8) **Persons for whom relief can be ordered.** The administrative law judge may order that remedies for an unfair practice be paid or accorded to the named complainant or complainants, and, in addition, to any other persons identified as having been injured by the unfair practice.

(9) **Nature and purpose of order.** An administrative order is one means of carrying out the public purpose of the law against discrimination: To eliminate and prevent certain discrimination. The administrative law judge in framing its order shall be guided by this public purpose. The administrative law judge's task is not the determination of private rights. See WAC 162-08-061, 162-08-062. The administrative law judge is not required to observe conventional common law or equity principles in fashioning the order. The guiding principle for the administrative law judge is whether a particular remedy will effectuate the purposes of the law against discrimination. An order requiring a respondent to pay money to a person as back pay, or to compensate for some other loss, is not a private award of damages, but is a public reparation order. Except as may be otherwise provided in RCW 49.60.260 and WAC 162-08-288, only the commission can enforce the order. The beneficiary has no property right in the money until he or she receives it. See WAC 162-08-305.

(10) **Retention of jurisdiction.** In appropriate cases the administrative law judge in his or her order may retain jurisdiction for a reasonable period of time for the purpose of determining compliance with his or her order or issuing orders supplementing or modifying the original order. If the administrative law judge does not retain jurisdiction through

a provision of his or her order he or she has no jurisdiction to modify or supplement his or her order, except on reconsideration (WAC 162-08-311). Retention of jurisdiction by the administrative law judge under this subsection does not prevent the administrative law judge's order from being final for the purpose of judicial review or enforcement.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-08-298, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-298, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-298, filed 9/2/77.]

WAC 162-08-301 Findings, conclusions, and order.

(1) **Preliminary decision of administrative law judge.** In every administrative hearing the administrative law judge shall prepare preliminary findings of fact, conclusions of law, and order in accordance with WAC 10-08-210, which shall be mailed to the parties and their counsel for comments, objections, and proposed corrections.

(2) **Final decision of administrative law judge.** After the expiration of thirty days from the receipt of comments upon the preliminary decision, the administrative law judge will issue a final decision which is enforceable in accordance with RCW 49.60.260.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-301, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-301, filed 9/2/77; Order 7, § 162-08-301, filed 1/19/68.]

WAC 162-08-305 Nature of orders—Enforcement.

(1) **Nature of orders.** Orders obtained by counsel for the commission are public reparation orders, not adjudications of private rights between respondents and persons aggrieved by the respondents' unfair practices. When a respondent is ordered to rehire or compensate a person, the person who is the beneficiary of the order has no property right in the job, money, etc., until the person receives it.

(2) **Enforcement of order.** Except as may be otherwise provided in RCW 49.60.260 and WAC 162-08-288, only the commission, through its counsel, has the authority to enforce an order of an administrative law judge. RCW 49.60.260.

(3) **Compromise of order.** Except as may be otherwise provided for a complaint alleging an unfair practice in a real estate transaction, the commission, acting in good faith, may compromise an order of an administrative law judge, with or without the consent of the beneficiaries of the order.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-08-305, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-305, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-305, filed 9/2/77.]

WAC 162-08-311 Reconsideration. (1) Motion.

Within ten days after being served with the final order of an administrative law judge, any party may serve and file a motion for reconsideration with the commission clerk. The motion shall identify the points that the party desires to have reconsidered and shall fully state the reasons for reconsideration. The motion shall in all other respects proceed as provided in RCW 34.05.470.

(2) **Finality for appeal.** When a motion for reconsideration has been filed, the order of the administrative law judge shall not be deemed final for purposes of appeal until the ruling on the motion has been served.

(3) **Reconsideration not necessary for appeal.** Motions for reconsideration should be made only when a party feels that the administrative law judge has overlooked or misunderstood something. It is not necessary to file a motion for reconsideration in order to appeal. RCW 34.05.470(5).

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-311, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-311, filed 9/2/77; Order 7, § 162-08-311, filed 1/19/68.]

VII RULE MAKING

WAC 162-08-600 Requests for advance notice of rule making. (1) **Form.** Requests for advance notice of rule making proceedings, as provided in RCW 34.05.320(3), shall be in writing and shall give the name of the requesting person or organization, and the address to which the notice is to be sent.

(2) **Duration.** Requests for advance notice of rule making proceedings will be honored for a period of three years after the date of the request, and may be renewed by written notice to the commission containing the information required for the original request.

(3) **Where filed.** Requests for advance notice of rule making proceedings should be filed at the Olympia office of the commission, attention rules coordinator.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-600, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-600, filed 9/2/77; Order 7, § 162-08-600, filed 1/19/68.]

WAC 162-08-610 Petitions for rule making. Petitions to the commission for the promulgation, amendment, or repeal of a rule under RCW 34.05.330 shall include a statement of the reasons for the requested action, and may be accompanied by a brief of any applicable law. Petitions for the promulgation of a rule shall set out the full text of the proposed rule. Petitions for the amendment of a rule shall identify the rule by its WAC number, and shall contain the complete text of the rule as proposed to be amended, showing additions by underlining the new words and showing deletions by marking them over with a dotted line. Petitions for repeal of a rule shall identify the rule by WAC number, and may quote its text.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-610, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-610, filed 9/2/77; Order 7, § 162-08-610, filed 1/19/68.]

VIII DECLARATORY ORDERS

WAC 162-08-700 Declaratory orders. (1) **Contents of petition.** A petition for a declaratory order under RCW 34.05.240 shall contain the following in addition to the requirements of RCW 34.05.240(1):

(a) A statement of the question on which the declaratory order is sought;

(b) A full statement of the facts giving rise to the question;

(c) A statement of the basis for the petitioner's interest in the question.

(2) **Form.** A petition for a declaratory order may be in any form, including the form of a letter or a pleading.

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(3) **Where filed.** Petitions for declaratory orders shall be filed with the clerk.

(4) **Confirmation, investigation.** In order to determine the full facts giving rise to the question the executive director may require the petitioner to submit additional information, and may make an independent investigation.

(5) **Notice and disposition.** Within fifteen days after receipt of a petition for a declaratory order, the commission will give notice of the petition to all persons to whom notice is required by law. Within thirty days after receipt of a petition for a declaratory order, the commission will:

(a) Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances; or

(b) Set the matter for specified proceedings to be held no more than ninety days after receipt of the petition; or

(c) Set a specified time no more than ninety days after receipt of the petition by which it will enter a declaratory order; or

(d) Decline to enter a declaratory order, stating the reasons for its actions. See RCW 34.05.240(5).

(6) **Revocation or revision.** A declaratory order may be revoked or revised at any time by vote of the commissioners at a meeting. The revocation or revision shall not be effective as to the person who requested the declaratory order until that person has notice of the revocation or revision.

(7) **Supersedure.** A declaratory order is automatically superseded, without need for notice, by any material change in the statutes, or by a decision of the Washington supreme court or court of appeals that is contrary to the declaratory order.

(8) **Reliance.** When any person has relied in good faith on a declaratory order of the commission, the commission will not thereafter assert a contrary position against that person, unless the declaratory order is revoked, revised, or superseded under subsection (7) of this section. This paragraph (8) covers persons other than the person to whom the declaratory order was issued, if the persons have justifiedly relied on the declaratory order.

(9) **Use of administrative law judge.** The commissioners may direct that a hearing for the purpose of issuing a declaratory order shall be held before a member of the commission, or a panel of members of the commission, or an administrative law judge. The member, panel, or administrative law judge shall hear testimony and argument, receive exhibits and other testimony, evaluate the material, and make a proposal for decision by the commissioners, to be considered and decided in the manner provided in RCW 34.05.410 through 34.05.494.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-700, filed 11/7/89, effective 12/8/89; Order 37, § 162-08-700, filed 10/27/77; Order 35, § 162-08-700, filed 9/2/77.]

(6/13/96)