

ADOPTED REGULATION OF THE NEVADA

EQUAL RIGHTS COMMISSION

LCB File No. R109-03

Effective November 17, 2003

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1 and 2, §1 of chapter 249, Statutes of Nevada 2003 and NRS 233.150, §§3 and 4, NRS 233.150.

Section 1. NAC 233.080 is hereby amended to read as follows:

233.080 1. ~~[The Executive Director shall determine whether on its face the complaint states grounds which if true would support a finding that probable cause exists to believe that an unlawful discriminatory practice has occurred.~~

~~—2.— If the Executive Director determines that a complaint fails to state a claim upon which relief can be granted or finds, after investigation, that there is no probable cause to believe that the allegations of the complaint are true, the case will be closed and the complaint will be dismissed. The Executive Director]~~ *Upon receipt of a complaint alleging discrimination, the Commission will designate the complaint as one of the following types of cases:*

(a) Category A case. A complaint will be designated a category A case if:

(1) Further investigation of the complaint will likely result in a finding that probable cause exists to believe that an unlawful discriminatory practice has occurred; or

(2) Irreparable harm will result if the processing of the complaint is not expedited.

(b) Category B case. A complaint will be designated a category B case if the complaint appears to have merit but additional evidence is needed to determine whether further

investigation would likely result in a finding that probable cause exists to believe that an unlawful discriminatory practice has occurred.

(c) Category C case. A complaint will be designated a category C case if the complaint appears to be without merit and it is not likely that further investigation will result in a finding that probable cause exists to believe that an unlawful discriminatory practice has occurred.

2. If the complaint is designated a:

(a) Category A case, the Administrator shall assign the case for further investigation or, upon the agreement of both parties, schedule an informal meeting to attempt to settle the case.

(b) Category B case, the Administrator shall schedule an informal meeting with both parties to attempt to settle the case. If the case cannot be settled in the informal meeting, the Administrator shall assign the case for further investigation.

(c) Category C case, the Administrator shall close the case and dismiss the complaint and shall, by mail, notify each party of the closure of the case and the dismissal of the complaint, including any finding or determination that was made regarding the case.

3. ~~[[If the Executive Director determines that the complaint states a valid claim, and determines after investigation that probable cause exists, the Commission will take such action as is authorized by statute.]~~ Each complaint alleging discrimination that is filed with the Commission must be served on the respondent named in the complaint. If the complaint is designated a category A case or category B case, the respondent shall provide to the Commission a statement of his position and any other additional information relating to the complaint that is requested by the Commission.

Sec. 2. NAC 233.110 is hereby amended to read as follows:

233.110 1. If the parties do not settle the case and the ~~{Executive Director}~~ *Administrator* conducts an investigation into the alleged discriminatory practice, the ~~{Executive Director}~~ *Administrator* may request any information from a party or witness that he deems necessary to conduct and conclude the investigation.

2. During an investigation, the ~~{Executive Director}~~ *Administrator* may apply to the Chairman of the Commission for the issuance of:

(a) A subpoena duces tecum requiring the production of books, records, papers, documents or other tangible items which are relevant to the investigation; or

(b) A subpoena requiring the attendance of a witness who is relevant to the investigation during the investigation.

3. During an investigation, the ~~{Executive Director}~~ *Administrator* may utilize the services of state and local agencies charged with the administration of housing and fair employment practices or the services of appropriate federal agencies. To the extent relevant, he may utilize information gathered by such agencies.

4. As a part of each investigation, the respondent ~~is entitled to:~~

~~—(a) Submit a statement of his position;~~

~~—(b)] may:~~

(a) Submit any evidence that the ~~{Executive Director}~~ *Administrator* deems material or relevant to the investigation;

~~{(e)}~~ (b) Identify any witness; or

~~{(d)}~~ (c) Submit a statement from a witness.

Sec. 3. NAC 233.130 is hereby amended to read as follows:

233.130 1. In an attempt to mediate between the parties after an investigation and a finding of probable cause, the ~~[Executive Director]~~ *Administrator* shall hold a meeting between the parties to attempt to achieve a just resolution to the controversy and obtain assurances that the respondent will eliminate the unlawful discriminatory practice. A disposition of a case pursuant to this subsection will be in writing and notice thereof will be sent to the parties. The Commission may require such proof of compliance as it deems appropriate before the case is closed.

2. The Commission may terminate its efforts toward conciliation and determine whether to close the case or to hold a public hearing on the matter if:

- (a) A complainant or respondent fails or refuses to:
 - (1) Confer with the Commission or its representative; or
 - (2) Make a good faith effort to resolve the dispute.
- (b) The attempt to conciliate the case pursuant to this section fails.

Sec. 4. NAC 233.220 is hereby amended to read as follows:

233.220 1. A case may be closed if:

(a) The Commission determines that the complainant is uncooperative in the settlement, investigation or determination of his case. For purposes of this paragraph, a complainant will be deemed uncooperative if:

(1) The Commission cannot locate or communicate with the complainant at the mailing address provided in the complaint;

(2) The complainant verbally or physically abuses or threatens a member of the Commission;

(3) The complainant consistently misses appointments, meetings or hearings scheduled by the Commission; or

(4) The complainant exhibits any other behavior that the Commission deems to hinder the resolution or determination of his case.

(b) The complainant requests the Commission to close the case.

(c) The parties settle the case.

(d) The Commission finds that no probable cause exists to believe that an unlawful discriminatory practice has occurred.

(e) The attempt to mediate between the parties fails and the Commission determines that the facts of the case do not warrant a public hearing.

(f) A party files a lawsuit involving any of the allegations in the complaint.

(g) There is any other final disposition of the case.

2. Any ground for early closure of a case must be documented and will be made a part of the file.

3. The ~~Executive Director~~ *Administrator* shall, by mail, notify each party of the closing of a case pursuant to this section.

4. The Commission will not reopen a case that was closed based on facts and allegations which are the same as or similar to those facts and allegations set forth in the original complaint.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R109-03**

The Nevada Equal Rights Commission adopted regulations assigned LCB File No. R109-03 which pertain to chapter 233 of the Nevada Administrative Code on October 8, 2003.

Notice date: 8/20/2003
Hearing date: 10/8/2003

Date of adoption by agency: 10/8/2003
Filing date: 10/30/2003

INFORMATIONAL STATEMENT

- 1. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.**

Public comment was solicited through the Notice of Intent to Act Upon a Regulation and the Notice of Public Workshop and Hearing For The Adoption, Amendment and Repeal of Regulations. Copies of the proposed regulation were posted at each county library within the state and mailed to each person who has requested to be placed on the Commission's mailing list. Copies were also made available at each of the Commission's offices. No written comments were received regarding the proposed regulations.

- 2. The number of persons who:**
(a) Attended each hearing: 9
(b) Testified at each hearing: 1
(c) Submitted to the agency written comment: 0

- 3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.**

Copies of the proposed regulation were posted at each county library within the state and mailed to each person or business that has requested to be placed on the Commission's mailing list.

- 4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

No changes were recommended.

- 5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:**
(a) Both adverse and beneficial effects; and
(b) Both immediate and long-term effects.

It is expected that the regulations will have a beneficial effect on businesses inasmuch as the regulations allow for the Commission to dismiss charges of discrimination in certain cases which will eliminate a named employer from having to respond to the charge of discrimination and having to expend potential legal fees in defending the charge of discrimination.

6. The estimated cost to the agency for enforcement of the adopted regulation.

None.

7. A description of any regulation of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

None.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

The regulation is not more stringent than a federal regulation.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The regulation does not provide for any such fee.