

MEMORANDUM

Agenda Item No. 9(A)(1)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: April 8, 2014

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution adopting and
approving Miami-Dade
Commission on Human Rights
Bylaws and Hearing Procedures
Resolution No. R-344-14

The accompanying resolution was prepared by the Human Resources Department and placed on the agenda at the request of Prime Sponsor Health and Social Services Committee.



R. A. Cuevas, Jr.
County Attorney

RAC/smm

Memorandum



Date: April 8, 2014

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Resolution Adopting and Approving Commission on Human Rights Bylaws and
Hearing Procedures

Recommendation

It is recommended that the Board of County Commissioners (Board) adopt and approve the Bylaws and Hearing Procedures of the Miami-Dade Commission on Human Rights (Commission).

The recommended changes to the Bylaws, in conjunction with changes to the Hearing Procedures needed to ensure compliance with Chapter 11A and the Florida Rules of Civil Procedure, were approved by the Commission during their March 26, 2013 meeting. However, before the Commission can implement their Bylaws and Hearing Procedures, Section 11A-5 of the Code of Miami-Dade County requires the Board's approval following a public hearing.

Scope

The impact of this resolution is countywide as the County's anti-discrimination ordinance provides protection from discrimination to residents of Miami-Dade County, and persons seeking to reside, work or visit the County.

Fiscal Impact/Funding Source

There will be no fiscal impact to the County.

Track Record/Monitor

The Commission will be responsible for monitoring compliance with the Bylaws and Hearing Procedures. The Human Rights and Fair Employment Practices Section of the Human Resources Department staffs the Commission.

Delegation of Authority

The Commission is delegated the authority to implement and enforce the provisions of its Bylaws and Hearing Procedures.

Background

The Commission was originally established as the Fair Housing Commission by Ordinance 69-25, which passed on June 18, 1969 and was later renamed the Fair Housing and Employment Appeals Board. Subsequent amendments added more protections from discrimination for residents of Miami-Dade County and defined case processing and enforcement authority. In April 1990, the Fair Housing and Employment Appeals Board was reestablished as the Equal Opportunity Board. In June of 2009, the Equal Opportunity Board was reestablished as the current Commission.

The Commission is a quasi-judicial agency charged with the enforcement of Miami-Dade County's Human Rights Ordinance, codified as Chapter 11A of the Miami-Dade County Code, as amended (Chapter 11A). Chapter 11A makes it unlawful to discriminate against any person in Miami-Dade County in employment, public accommodations, credit and financing practices and housing

accommodations on the basis of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation and/or source of income. The Commission also enforces the Miami-Dade County Family Leave Ordinance (Article V of Chapter 11A) and the Domestic Violence Leave Ordinance (Article VIII of Chapter 11A). The Commission's mission is to reduce discrimination in Miami-Dade County and promote equal treatment for all persons in employment, housing, public accommodations, and credit and financing.

The Commission established a Bylaws Committee, which recommended extensive changes to the Commission's Bylaws needed to ensure consistency with recent revisions to Chapter 11A. The recommended changes to the Bylaws are necessary to be compliance with Chapter 11A and the Florida Rules of Civil Procedure. Some of the changes include, but are not limited to:

Hearing Procedures

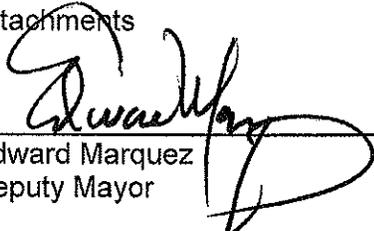
- The addition of language to Section IV(F) stating that the Commission Chairperson shall not rule on any motion requesting dismissal of case because of a party's failure to comply with the Florida Rules of Civil Procedure or failure to comply with an order issued by the Commission. Instead, such motions shall be referred to a Hearing Panel to resolve.
- The addition of language to Section VII(C) stating that in the event a party fails to make an appearance at the scheduled hearing, the hearing panel shall commence the hearing 15 minutes from the scheduled time of the hearing. Prior to the entry of an order of dismissal for a party's failure to appear, the hearing panel shall establish the steps taken by the Director of the Commission on Human Rights to notify the parties of the hearing.
- The addition of language to Section VIII(B) stating that prior to the scheduled hearing, the Commission Chairperson may rule on motions for continuances filed by any party at least two weeks in advance of a scheduled hearing. Motions for continuances filed less than two weeks before the scheduled hearing may be granted if the moving party is able to demonstrate good cause.
- The addition of paragraph G to Section VIII stating if any party with a disability who needs any accommodation to participate in any proceeding before the Commission, the party shall be entitled, at no cost, to them.
- The addition of paragraph H to Section VIII stating that any party who is not able to communicate in English, may provide, at their cost, a translator to translate on their behalf.
- The addition of language to Section IX(B) stating that all proposed orders of the hearing panel shall be deemed final when the Commission has voted to approve the proposed order, the Chairperson or Vice-Chairperson has signed the order, and the clerk of the Commission on Human Rights has date-stamped it.

By-laws

- The addition of Section 2.1 of Article II which lists the specific duties and powers of the Commission.
- The addition of Section 3.3 to Article III stating that the Commission members have an eight year term of office; however, the Board may waive this limitation by resolution adopted by a two-thirds (2/3) vote. Additionally, the term of every board member nominated by a County Commissioner shall automatically expire when: (1) the nominating Commissioner leaves office, or (2) the nominating Commissioner's term of office expires.
- The addition of Section 3.4 to Article III stating that members shall serve without compensation but shall be entitled to reimbursement for necessary expenses including but not limited to, training and travel, subject to approval by the Board.

- The addition of language to Section 4.1 of Article IV stating that members must comply with Florida's Government in the Sunshine Law and the Florida Public Records Act set forth in Chapter 119 of the Florida Statutes.
- The addition of language to Section 4.2 of Article IV stating that Commission meetings shall be held monthly or as needed to hear and dispose of the pending cases. The Chairperson and/or three members may call an emergency meeting.
- The addition of language to Section 5.2 of Article V stating that no person shall be eligible to serve on the Commission if the person has filed a lawsuit against the County that is pending at the time of appointment and that challenges a policy set by the Board, unless the Board by two-thirds (2/3) vote of its membership waives this requirement. No person sitting on the Commission may file a lawsuit against the County that challenges a policy set by the Board without relinquishing his or her seat on the Commission unless the Board by two-thirds (2/3) vote of its membership waives this requirement. Additionally, no member of the Commission shall become a candidate for elective political office during his or her term.
- The addition of language to Section 6.2 of Article VI stating that the Commission may remove an officer for inefficiency, neglect of duty or misconduct in office, but only after a hearing before the Commission and only if they have been given a copy of the charges at least ten days prior to the hearing.
- The addition of language to Section 6.4 of Article VI stating that the election of the Chairperson, First Vice-Chairperson and Second Vice-Chairperson shall be held every two years in March of said year. Nominations for Chairperson, First Vice-Chairperson and Second Vice-Chairperson shall be at least one month prior to the election.
- The addition of Section 7.1. to Article VII stating that all Commission members shall comply with all applicable federal, state and county Code of Ethics governing financial interest, ownership or other business disclosure and conflict of interest rules; publicly disclose any possible conflict of interest; and members with a conflict of interest must recuse themselves from voting.
- The addition of Section 7.2 to Article VII stating that no member shall engage in or encourage ex parte communication with any party appearing before the Commission.

Attachments



Edward Marquez
Deputy Mayor



MEMORANDUM

(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: April 8, 2014

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 9(A)(1)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's _____, 3/5's _____, unanimous _____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 9(A)(1)
4-8-14

RESOLUTION NO. R-344-14

RESOLUTION ADOPTING AND APPROVING MIAMI-DADE
COMMISSION ON HUMAN RIGHTS BYLAWS AND
HEARING PROCEDURES

WHEREAS, the Miami-Dade Board of County Commissioners (“Board”) adopted Ordinance No. 97-17, as amended and as codified in Chapter 11A of the Code of Miami-Dade County (“Code”); and

WHEREAS, the Board exercising their police powers for the public safety, health and general welfare enacted the Code to eliminate and prevent discrimination in employment, family leave, public accommodations, credit and financing practices, and housing accommodations because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation or source of income as it pertains to housing only; and

WHEREAS, pursuant to Section 11A-4 of the Code, the Board established the Miami-Dade Commission on Human Rights (“Commission”) to enforce the provisions of the Code; and

WHEREAS, Section 11A-5 (b) of the Code grants the Commission with the authority “to adopt, promulgate, amend and rescind rules and regulations necessary to effectuate the purposes and provisions of this chapter following a public hearing and subject to approval by the County Commission”; and

WHEREAS, the Commission established a Bylaws Committee, which has recommended extensive changes to the Commission’s Bylaws, which are attached hereto as Exhibit A and incorporated by reference; and

WHEREAS, the Commission has reviewed and recommends that the Hearing Procedures be amended as set forth in Exhibit B and incorporated by reference; and

WHEREAS, the recommended changes to the Bylaws are needed to ensure that said Bylaws are consistent with the recent revisions to the Code and are further needed to improve the way the Commission conducts its business; and

WHEREAS, the recommended changes to the Hearing Procedures are needed to ensure that said Hearing Procedures are consistent with the Code and the Florida Rules of Civil Procedure; and

WHEREAS, the Commission approved the Bylaws and Hearing Procedures during their March 26, 2013 meeting; and

WHEREAS, the Commission recommends that the Board approve the Bylaws and Hearing Procedures ; and

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. The foregoing recitals are incorporated in this resolution and are approved.

Section 2. The Board hereby adopts and approves the Commission's Bylaws and Hearing Procedures, in substantially the form attached hereto as Exhibits A and B, respectively.

The foregoing resolution was offered by Commissioner **Sally A. Heyman** who moved its adoption. The motion was seconded by Commissioner **Rebeca Sosa** and upon being put to a vote, the vote was as follows:

	Rebeca Sosa, Chairwoman	aye
	Lynda Bell, Vice Chair	aye
Bruno A. Barreiro	aye	Esteban L. Bovo, Jr. aye
Jose "Pepe" Diaz	absent	Audrey M. Edmonson aye
Sally A. Heyman	aye	Barbara J. Jordan aye
Jean Monestime	aye	Dennis C. Moss aye
Sen. Javier D. Souto	aye	Xavier L. Suarez aye
Juan C. Zapata	aye	

The Chairperson thereupon declared the resolution duly passed and adopted this 8th day of April, 2014. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK



By: **Christopher Agrippa**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Terrence A. Smith

MIAMI-DADE COUNTY COMMISSION ON HUMAN RIGHTS HEARING PROCEDURES

I. REQUEST FOR HEARING

A charging party or respondent aggrieved by the >>Director's<< [[director's]] recommended final order may request a hearing before a panel of the >>Commission<< [[commission]] by writing to the >>Director<< of the Miami-Dade County >>Commission<< [[commission]] on Human Rights (>>Commission<< [[commission]]) 111 N.W. 1st Street, 22nd Floor, Miami, Florida 33128, not later than fifteen (15) days after service of the >>Director's<< findings.¹ In a housing discrimination case the request for hearing must be received not later than twenty (20) days. Service of the request for a hearing shall be made in person or by certified mail.

II. GOVERNMENT IN THE SUNSHINE

All hearings, deliberations and decisions of the >>Commission<< [[commission]] shall be open to the public in accordance with Section 186.011 et seq., Fla. Stat., as amended.

III. NOTICE OF HEARING

A. The hearings of the >> Commission << [[commission]] shall be held at such time and in such place as shall be designated by the >>Director<< of the >>Commission <<.

B. At least twenty (20) days prior to the hearing, the >>Director<< of the >>Commission<< [[commission]] shall deliver a notice of hearing to the respondent and the charging party by personal service or certified mail. Such notice shall include the time and place at which the hearing is to be held, and shall inform the parties that any appellate review will require a verbatim record of the proceedings.

IV. SUBPOENAS AND DISCOVERY

A. A party may pursue discovery only through the methods set forth in the Florida Rules of Civil Procedure and shall be bound by the limitations set forth in those rules.

B. Any party to a hearing before the >>Commission<< [[commission]] may request a reasonable number of subpoenas to be issued upon the

¹>>Pursuant to Section 11A-2 of the Code of Miami-Dade County, the >>Commission's hearing Procedures were adopted by the << [[Amended by Ordinance 06-179, passed by Commission]] Miami-Dade County >>Commissioners on upon the adoption of Resolution No. R- - 2013<<.

authority of the >>Chairperson<< [[chairperson]] of the >>Commission<< [[commission]] to compel the appearance of any person to testify before the >>Commission<< [[commission]] or testify at deposition. Any request for subpoenas shall be in writing and shall be received by the >>Director<< [[director]] not less than fifteen (15) days prior to the hearing or deposition. Such a request shall state the time and place at which the witness is to appear, and the name of the party on whose behalf the witness is called to testify. Where a subpoena duces tecum is requested, the request shall describe with particularity any material to be produced.

C. The requesting party is responsible for service of any subpoenas issued pursuant to this section. Service shall be accomplished as provided in Chapter 48, Fla. Stat., as amended.

D. Within ten (10) days after service of a subpoena upon any person, but in no event later than the time specified in the subpoena for compliance, such person may petition the board to revoke or modify the subpoena. The >>Commission<< [[commission]] shall grant the petition upon a finding that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which is not relevant to the proceeding before the board, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good cause.

E. All discovery shall cease six >>(6)<< months after submission of a request for hearing or 15 days prior to the hearing whichever is earliest. Any party may request an extension of discovery for good cause shown.

F. All procedural issues, including but not limited to issues regarding subpoenas or discovery shall be decided by the >>Chairperson<< [[chairperson]] of the >>Commission<< [[commission]] with advice from the County Attorney's Office. Any person aggrieved by the >>Chairperson's<< [[chairperson]] decision may appeal that decision to a panel of three >>(3)<< board members which shall be convened solely to resolve the issue of procedure or discovery. The decision of the panel shall be final as to an issue regarding procedure, discovery or the issuance of subpoenas. >>Notwithstanding the Chairperson's delegated authority to resolve discovery disputes, the Chairperson shall not rule on any motion requesting dismissal of case because of a party's failure to comply with the Florida Rules of Civil Procedure or failure to comply with an order issued by the Commission. Instead, such motions shall be referred to a Hearing Panel to resolve.<<

V. EVIDENCE

A. Any party or member of the >>Commission<<'s hearing panel may call, examine and cross-examine witnesses, and introduce documentary

and other evidence into the record. Upon offering an exhibit into evidence at a hearing, a party shall provide an original and four (4) copies to the >>Commission<< [[commission]] and simultaneously furnish copies to all other parties.

B. All relevant and material evidence, oral or written, may be received. Hearsay evidence shall be accorded such weight as the circumstances warrant. In its discretion, the >>Commission's<< [[commission's]] >>hearing panel<< may exclude irrelevant, immaterial or unduly repetitious evidence. A party is entitled to present his or her case by oral and or documentary evidence, to submit rebuttal evidence, and to conduct cross-examination. Both parties may appear in person or through any duly authorized personal representative.

C. The burden or persuasion, or the duty of producing evidence to substantiate an allegation of discrimination, remains with the charging party in all hearings before the [[commission]] >>Commission<<.

D. Final orders of the >>Commission<< [[commission]] shall be supported by competent substantial evidence.

VI. ADMINISTRATIVE NOTICE

Upon request the >>Commission<< [[commission]] shall take administrative notice of provisions of federal law, state law, local ordinances, decisions of other administrative agencies and other matters subject to judicial notice; PROVIDED, HOWEVER, that matters so noticed shall be specified on the record. Either party shall be afforded an opportunity, on the record, to rebut such matters.

VII. MOTIONS OR OBJECTIONS

A. Any preliminary motions or objections shall be heard and disposed of by the hearing panel before proceeding to the merits of the case. Upon its own motion the hearing panel may defer ruling on any such motion until the conclusion of the evidentiary portion of the hearing.

B. After the charging party has completed the presentation of his or her case-in-chief, the respondent ~~[[opposing party]]~~ may move for dismissal on the ground that on the facts and the law the charging party has shown no prima facie violation of Chapter 11A, Code of ~~[[Metropolitan]]~~ >>Miami<<-Dade County, without waiving the right to offer evidence if the motion is not granted. The hearing panel may grant the motion and enter a final order against the charging party upon a specific finding that the charging party has failed to establish a prima facie case>>, may deny the motion, << or may >>defer ruling on the motion<< ~~[[to enter~~

~~its final order]] until the conclusion of the >>end of the respondent's case-in-chief<<.. A final order granting such a motion to dismiss shall operate as adjudication on the merits.~~

C. Upon ~~>>motion by a party or the hearing panel<< [[approval of a proper motion by any member of the hearing panel,]]~~ the ~~>>hearing panel may dismiss a case<< [[director's recommended final order shall be entered as the final order of the commission]]~~ if the party requesting the hearing fails to appear after proper notice or fails to establish good cause for such failure to appear. ~~>>Prior to the entry of an order of dismissal, the hearing panel shall establish through documentary and oral evidence the steps taken by the Director to notify the parties of the hearing. In the event a party fails to make an appearance at the scheduled hearing, the hearing panel shall commence the hearing fifteen (15) minutes or soon thereafter from the scheduled time of the hearing. On the day of the hearing, all efforts shall be made by the Director's staff to contact the absent party to determine their whereabouts.<<~~

VIII.

THE HEARING

A. The Chairperson ~~[[chairperson]]~~ shall open the hearing at the time and place specified in the notice of hearing, or as soon thereafter as a hearing panel of the ~~>>Commission<< [[commission]]~~ can be obtained. After a reasonable time, if the ~~>>Chairperson<<~~ determines that ~~>>there are insufficient members to establish quorum for a hearing panel, the hearing panel's chairperson shall state so on the record and a new hearing date shall be scheduled by the Director [[no hearing panel can be obtained, the hearing shall be continued until such time as a hearing panel can be obtained.]]~~ At least three (3) members of the ~~>>Commission<<~~ shall constitute a hearing panel for the purposes of conducting a hearing and approving final orders on complaints~~<< [[At least three members of the commission shall be sufficient to constitute a hearing panel.]]~~

B. ~~>>Prior to the scheduled hearing, the Chairperson may rule on motions for continuances filed by any party. Parties shall file any motions for continuance a minimum of two (2) weeks in advance of a scheduled hearing. At the discretion of the Chairperson, motions for continuances filed less than two (2) weeks before the scheduled hearing may be granted if the moving party is able to demonstrate good cause<<~~

~~[[Either the charging party or the respondent may request a continuance to obtain counsel or a duly authorized representative.]]~~

C. At the commencement of the hearing, the ~~>>Chairperson<<~~ shall ask whether both parties are prepared to proceed.

D. The ~~>>Director's<< [[director's]]~~ recommended final order and complete investigation file shall be entered into the record as an exhibit of the board.

E. Judicial rules of procedure, including rules of evidence and civil procedure need not be strictly applied to these quasi-judicial administrative hearings.

F. Each party shall have the right to present an opening statement. After opening arguments from each party, the charging party shall have the opportunity to call witnesses and present any evidence. Following the presentation of the charging party's case, the respondent shall have the right and opportunity to present a defense by offering testimony and documentary evidence. The charging party shall then have the right to present any rebuttal testimony or other evidence. The >>Director<< ~~[[director]]~~ may then present any additional evidence deemed relevant or material. Upon request from any party, the >>Chairperson<< may provide a reasonable amount of time for oral argument at the conclusion of the hearing.

>>G. If any party with a disability who needs any accommodation to participate in any proceeding before the Commission, the party shall be entitled, at no cost to them, to the provision of certain assistance. A party shall contact the Miami-Dade County Court's ADA Coordinator at Lawson E. Thomas Courthouse Center, Suite 2702, 175 Northwest First Avenue, Miami, FL 33128, telephone numbers 305.349.7175 for voice or 305.349.7174 for TDD and 305.349.7355 for fax, at least seven (7) days before the scheduled hearing before the Commission, or immediately upon receiving a notification from the Commission if the time before the scheduled appearance is less than seven (7) days; if a party is hearing or voice impaired, they should call 711 for the Florida Relay Service.

H. If any party is not able to communicate in English, they may provide, at their cost, a translator to translate on their behalf.<<

IX. RENDERING THE DECISION

A. >>Upon the conclusion of the evidentiary hearing, the hearing panel deliberate and vote on whether to uphold or reverse the Director's determination. Thereafter, a written order will be prepared and<< ~~[[The final decision of a hearing panel of the commission may be reserved or the decision may be rendered immediately. All decisions]]~~ shall include a statement of (1) findings and conclusions with respect to all material issues of fact or law presented on the record, and (2) the appropriate order for sanction, relief or denial thereof.

B. All >>proposed orders of the hearing panel<< shall be deemed final when >>the Commission at a regularly scheduled business meeting has voted to approve the proposed order, the Chairperson or Vice-Chairperson has signed the order, and the clerk of the Commission has

~~date-stamped it.<< [[rendered by the hearing panel. For purposes of this subsection, the term "rendered" shall mean a written final order which addresses the issues of liability, damages and attorney fees which is ratified by the hearing panel and signed by the chairperson.]]~~

X. ATTORNEY FEES, EXPERT WITNESS FEES AND COST OF LITIGATION

A. A motion for attorney fees, expert witness fees or costs of litigation in a proceeding before the >>Commission<< [[~~commission~~]] may be filed with the >>Commission<< [[~~commission~~]] or the >>Director<< by any party prior to the close of the evidentiary hearing or prior to adoption of a final order by the hearing panel. All evidence supporting or contravening the claim that attorney fees, expert witness fees or costs should be awarded shall be presented at the close of the evidentiary hearing. >>Thereafter, a hearing shall be scheduled separately on the motion for attorney's fees.<< The evidence presented should address the threshold question of whether fees should be awarded to any party and need not specify the amount of fees claimed.

B. If the >>Commission<< [[~~commission~~]] determines that an award to the prevailing party of attorney fees, expert witness fees or costs of litigation is appropriate, the >>Director<< [[~~director~~]] shall notify the parties of that determination by certified mail or personal service. Within twenty (20) days of the service of such notification, the prevailing party shall file with the >>Commission<<, and serve >>upon<< all opposing parties, a written proposal for the amount of fees to be awarded. The proposal shall be sworn and shall be supported by affidavit on any individual having personal knowledge of the facts contained therein. The proposal shall include:

1. The name and business address of the attorney performing the services for the prevailing party;

2. The experience, reputation and background of each of the attorneys listed, including the number of years of practice, experience in the field of civil rights and discrimination litigation, specialized academic background, professional associations and any other pertinent experience;

3. The number of hours or portions thereof expended by each of the above attorneys in this matter, identifying the date, description of each service performed and time expended on that matter from contemporaneously kept time records which must be produced upon request;

4. The hourly rate for the attorney for whom the fee is claimed, including the hourly rate normally charged by that

attorney, as supported by affidavits attesting to the hourly rate prevailing in the community for similar work by attorneys of similar experience and competence;

5. Whether this case was contingent in nature or whether compensation was certain and whether the lodestar fee, which consists of the hourly rate multiplied by hours expended, should be adjusted based on contingency;

6. Whether there has been a delay in the receipt of payment for services rendered, and if so, the nature, length and cause of the delay, and whether the lodestar fee should be adjusted to reflect this factor;

7. Whether the lodestar fee should be adjusted because of the quality of representation and the reason therefore;

8. Whether the prevailing party believes that issues presented in this case were particularly novel or difficult and, if so, the reasons for that belief;

9. Whether the acceptance of employment in the particular case involved the loss of employment with other clients while employed in the particular case, and if so, why;

10. The nature of the attorney-client relationship, stating whether this case was performed for a casual client or an established and constant client;

11. Whether an agreement with respect to fees existed between the attorney and client, and, if so, a copy of that agreement must be attached to the fee proposal, or if the agreement was oral, the terms thereof;

12. The amount actually billed to the client for the case, attaching to the fee request copies of all bills to the client for the case. If the amount billed differs from the amount requested, the prevailing party must explain the reasons therefore;

13. Any other relevant factors to be considered by the >>Commission<< [[eommission]] in the determination of an appropriate fee, including the amounts of awards in similar cases;

14. The amount of costs and expert witness fees incurred in this proceeding, itemizing each such cost and attaching documentation to support the request.

C. An opposing party who disagrees with any aspect of the proposal filed by the prevailing party shall file a counterproposal within fifteen (15) days after the filing of the proposal. The counterproposal shall specify the items with which the opposing party agrees, the items with which the party disagrees and the reasons for the disagreement. All counterproposals shall be supported by affidavit where appropriate, or if the information supporting the claim is exclusively in the possession of the attorney for the prevailing party, the opposing party may move the >>Commission<< ~~[[commission]]~~ for an order seeking discovery of the information. In such a motion, the moving party must state that the information sought could not be obtained elsewhere and that the prevailing party has refused to cooperate voluntarily. If no timely counterproposal is filed, the prevailing party's proposal shall be deemed accepted.

D. An evidentiary hearing shall not be held on the issue of attorney's fees, expert witness fees and costs. A final award of attorney fees, expert witness fees and costs may be issued by the hearing panel, >>subject to final approval by the Commission<< ~~[[or by the commission at any regular business meeting]]~~. In issuing its final order the hearing panel or the >>Commission<< ~~[[commission]]~~ shall consider the proposals and counter proposals filed by the parties. A request for attorney's fees, expert fees and costs which is not supported by appropriate documentation shall be denied.

E. In determining an award of attorney fees, the >>Commission<< ~~[[commission]]~~ shall be guided by the considerations set forth by the Florida Supreme Court in Standard Guaranty Insurance Co. v. Quanstrom, 55 So.2d 828 (Fla. 1990).

XI. INTEREST

A. Prejudgment interest shall accrue on back-pay from the date of demand for remedy of discrimination or the date of filing of the complaint whichever occurred first and shall accrue at the rate provided in Section 687.01, Fla. Stat., as amended.

B. Interest shall accrue on awards of the >>Commission<< ~~[[commission]]~~ at the rate provided in Section 55.03, Fla. Stat., as amended.

XII. DISCRETIONARY REVIEW

A. Within fifteen (15) days following the issuance of the written final order by the >>Commission<< ~~[[commission]]~~, a party ~~[[or any member of the commission]]~~ may file a written request for rehearing of a case or amendment of a final order by the >>Commission<< ~~[[commission]]~~. A request for rehearing shall state with particularity the factors overlooked or

misapprehended by the original hearing panel and shall not reargue the merits of the case.

B. At the first regularly scheduled meeting following the receipt of such a request, the members of the >>original hearing panel<< shall vote on whether to grant the request for review.

C. If the request for rehearing is granted, the >>Commission<< [[commission]] shall expeditiously schedule a hearing. At least five (5) members shall constitute a hearing panel for the purposes of such review.

D. Upon the conclusion of rehearing, the rehearing panel shall issue a written final order which may modify, rescind or reverse the final order issued by the original hearing panel.

E. No appeal to the >>Commission<< [[commission]] shall be had from a denial of a request for rehearing.

XIII. JUDICIAL REVIEW

A. The >>Commission's<<'s [[commission's]] final order shall be subject to judicial review in accordance with the Florida Rule of Appellate Procedure. For the purposes of such review, any notices required to be filed with the lower tribunal pursuant to the Florida Rules of Appellate Procedure shall be filed with the >>Director<< [[director]]. The >>Commission<< [[commission]] shall provide the index and record on appeal when required by, and in accordance with, the Florida Rules of Appellate Procedure. A fee may be charged by the >>Commission<< [[commission]] for the preparation and transmission of the record on appeal to the court of appropriate jurisdiction.

B. All proceedings before the >>Commission<< [[commission]] shall be recorded through the use of a tape recorder or by live court reporter. Should any party desire to appeal from any final order rendered by the >>Commission<< [[commission]], a record of the proceedings is required. For appellate purposes, the party desiring to appeal must personally ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

C. Any party desiring the service of a live court reporter, in lieu of >>Commission<< [[commission]] tape recordings of the proceedings before the >>Commission<< [[commission]] shall provide for the same.

D. Unless specifically ordered by the >>Commission<< [[commission]] or a court of competent jurisdiction, the commencement of an appeal does not operate to suspend or stay a final order of the >>Commission<<

[[commission]] or the >>Director<< [[director]].

Miami-Dade County
Commission on Human Rights

By-Laws



BYLAWS
OF THE
MIAMI-DADE COUNTY COMMISSION ON HUMAN RIGHTS

ARTICLE I

AUTHORITY AND SCOPE

>>1.1<< **Authority.** The Miami-Dade County Commission on Human Rights (“CHR”) is >>a<< quasi-judicial >>and an advisory<< ~~[[board and agency]]~~ of the government of Miami-Dade County, Florida, having been established >>pursuant to ~~[[by]]~~ Miami-Dade County Ordinance No. ~~[[69-25]]~~ >>97-17, as amended, which was first<< adopted by the Board of County Commissioners >>(“County Commission”)<< on >>February 25, 1997<< and codified >>in<< Chapter 11A of the Code of Miami-Dade County (“Chapter 11A”).

>>1.2 **Policy.** The County Commission has declared it to be the policy of Miami-Dade County, in the exercise of its police power for the public safety, health and general welfare, to eliminate and prevent discrimination in employment, family leave, public accommodations, credit and financing practices, and housing accommodations because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status or sexual orientation. It is further hereby declared to be the policy of Miami-Dade County to eliminate and prevent discrimination in housing based on source of income. << ~~[[Chapter 11A established the purposes of the CHR, qualifications for membership, set forth the powers of the CHR and the investigative and appellate process.~~

~~These Bylaws are adopted pursuant to the authorization contained in Section 11A-5, Paragraph (2) of Chapter 11A which authorizes the CHR “To adopt, promulgate, amend and rescind rules and regulations necessary to effectuate the purposes and provisions of this chapter ...”]~~

Section >>1.3<< **Scope. >>These Bylaws are adopted pursuant to Section 11A-5, Paragraph (2) of Chapter 11A which authorizes the CHR “[t]o adopt, promulgate, amend and rescind rules and regulations necessary to effectuate the purposes and provisions of this chapter following a public hearing and subject to the approval of the County Commission.”<< These Bylaws are intended to supplement the matters covered by Chapter 11A and not to supersede or**

modify any provision of Chapter 11A. In the event of any conflict between anything contained in the Bylaws and anything contained in Chapter 11A or any other applicable ordinance or law, the latter shall govern.

ARTICLE II

>>DUTIES

2.1 Duties, Functions, Powers and Responsibilities. The CHR shall have the following duties, functions, powers and responsibilities:

- (a) To apply to the appropriate court on behalf of the County for such temporary or permanent injunctive relief as the Commission, or a Hearing Panel thereof, believe is necessary to preserve the status quo or to prevent irreparable harm and to carry out the purposes of this chapter;
- (b) To adopt, promulgate, amend and rescind rules and regulations necessary to effectuate the purposes and provisions of this chapter following a public hearing and subject to approval by the County Commission;
- (c) To issue an adjudicative final order upon the authority of the Chairperson following approval by the appropriate Hearing Panel. Such an adjudicative final order may review and uphold, modify or reverse recommended final orders issued by the Director or his or her designated representative in accordance with the provisions of this chapter;
- (d) To administer oaths;
- (e) To compel, by subpoena issued by the Chairperson of the Commission, the attendance of witnesses and the production of evidence for discovery, investigation, hearing or deposition for the preservation of testimony;
- (f) To issue remedial orders requiring cessation of violations of this chapter;

- (g) To issue such other final orders as, in the judgment of the Hearing Panel, will carry out the purposes of this chapter, including but not limited to:
- (1) Hiring, reinstatement or promotion of employees with accrued seniority, with accrued benefits and with back pay;
 - (2) Taking affirmative action and making corrections; and
 - (3) Requiring reasonable accommodation;
 - (4) Awarding of front pay, to the extent that the calculation of any such front pay is quantifiable and reasonably definite.
- (h) To issue final orders dismissing the complaint;
- (i) To award quantifiable relief to a prevailing complainant for injuries incurred as a proximate result of an act prohibited by this chapter or to apply to the appropriate court for such an award, provided that such damages are not prohibited by state or federal law;
- (j) To award costs and Attorney's fees to a prevailing party or to apply to the appropriate court for such an award; provided, however, that such an award is not contrary to the purposes of this chapter.
- (11) To award prejudgment interest to a prevailing party upon a finding of employment discrimination and post judgment interest to a prevailing party upon a finding of any type of discrimination, or to apply to the appropriate court for such an award;
- (12) At the conclusion of a hearing and upon a finding of housing discrimination in violation of Article II of Chapter IIA, to recommend that the County Attorney commence a civil action on behalf of the County for fines pursuant to Section 11A-17.

ARTICLE III

COMPOSITION, QUALIFICATIONS, TERM OF OFFICE, AND COMPENSATION

3.1. Composition. The CHR shall consist of twenty-six (26) members appointed by the members of the County Commission.

3.2. Qualifications of Members. CHR members shall be permanent residents and electors of Miami-Dade County, Florida. Membership shall be made on the basis of civic pride, integrity, experience and interest in the area of equal opportunity, and be representative of the County's population and reflective of the racial and ethnic make-up of Miami-Dade County, in addition to geographic, economic and gender considerations.

3.3 Term of office. No board member shall serve more than eight (8) consecutive years. Nothing set forth in this section shall prohibit any individual from being reappointed to the CHR after a hiatus of two (2) years. Notwithstanding the foregoing, the County Commission may, by a resolution adopted by a two-thirds (2/3) vote of members present, waive the restriction that a particular member of a board may not serve more than eight (8) consecutive years on that board or any other term limit applicable to a particular board member. Additionally, notwithstanding any other provision of the Code or of any resolution, the term of every board member nominated by a Commissioner shall automatically expire when: (1) the nominating Commissioner leaves office or (2) the nominating Commissioner's term of office expires. Notwithstanding the previous sentence, a CHR member may remain as a member for continuity and quorum as determined by the County Attorney.

3.4 Compensation. Members shall serve without compensation but shall be entitled to reimbursement for necessary expenses including but not limited to, training and travel, subject to approval by the County Commission. Training in equal opportunity shall be provided to all Commission Members at least once a year. Notwithstanding the foregoing sentence, training may be provided more than once a year at the request of the CHR. In the event, there is a cost associated with any training, the CHR may approve such training, subject to budgetary approval by the County Commission.

ARTICLE IV<<

MEETINGS ~~[[OF THE CHR]]~~ >>AND HEARINGS

4.1<< **Public Meetings.** All meetings, hearings and business of the CHR shall comply with all of the requirements of >>the Florida's Government in the Sunshine Law, as codified at<< Florida Statute §286.011, >>as amended<< ~~[[and any amendments thereto.]]~~
>>All CHR members must comply with Florida's Government in the Sunshine Law and the Florida Public Records Act set forth in Chapter 119 of the Florida Statutes. The Florida Government in the Sunshine Law prohibits discussion outside a duly noticed meeting between any two or more members of the Commission, standing committees or subcommittee regarding any matter that may come before the respective committees or subcommittee as an item of business. This restriction includes correspondence by email, which is considered public record.

4.2 **Business**<< **Meetings.** >>Meetings of the CHR shall be held monthly or as needed to hear and dispose of the pending cases. Notice of the time and place of business meetings shall be given to all CHR members and to all parties scheduled to be heard. The Chairperson may call an emergency meeting. Additionally, three (3) members may also call an emergency meeting upon written request to the Director.

4.3<< **Hearings.** ~~[[Regular meetings of the CHR may be held at such time, not less frequently than monthly, and at such place within Miami Dade County as shall be from time to time determined by the CHR. Appeal h]]~~ Hearings shall be held as frequently as necessary to effectuate the purposes and provisions of Chapter 11A. >>Hearings shall be held in accordance with the CHR Hearing Procedures and the Florida Rules of Civil Procedure. Each hearing shall be chaired by the Chairperson, 1st Vice Chairperson, Second Vice Chairperson or any other member of the CHR. Each member of the CHR shall endeavor to serve as chair on at least one hearing panel during a twelve month period.

4.4 << **Special Meetings.** Other meetings of the CHR may be held upon notice by letter, telegram or in person, delivered for mailing transmission or in person as the case may be, not later than during the fifth day immediately preceding such meeting, upon the call of the Chairperson or any five >>(5)<< board members.

>>4.5<< **Notices and Waivers and Notice.** Notice of any meeting of the CHR may be waived in writing signed by the members entitled to such notice, whether before or after the time of such meeting. Attendance of a member at such meeting shall constitute waiver of

notice thereof. The purpose or purposes of such meeting shall be specified in the notice or waiver of notice of such meeting.

>>4.6<< **Agenda.** The Agenda for all >>business<< meetings of the CHR shall be determined by the Chairperson in consultation with the staff and with regard to the recommendations of the members. The agenda for appeal hearings shall be determined by staff in consultation with the designated chairperson of the hearing panel.

>>4.7<< **Voting.** Each member shall be entitled to one vote, if present, on each matter coming before ~~[[a meeting of]]~~ the CHR. No member may vote by proxy.

>>4.8<<, **Conduct of >>Business<< Meetings and Hearings** . All >>business or special<< meetings >>and hearings<< shall be open to the public but participation in discussion by members of the public shall be at the sole discretion of the chairperson of the meeting >>or hearing.<< ~~[[In the conduct of all meetings, t]]~~ The agenda shall be followed to the extent practicable, but the matters considered and the procedure to be followed shall be within the sole discretion of the Chairperson, subject to requirements of >>any<< applicable County ordinance or other laws. In the absence of the Chairperson at a >>business or special<< meeting, the >>First<< Vice Chairperson shall serve as the Chairperson. The >>Second<< Vice Chairperson shall serve in the absence of the Chairperson and First Vice Chairperson. In the absence of the Chairperson and the >>First<< and >>Second<< Vice Chair>>persons<<, the most senior board member shall serve as the Chairperson of the >>business or special<< meeting.

>>4.8<< **Attendance.** CHR members shall participate in at least one hearing panel per month and one >>business<< meeting per month. In the event that a hearing to which a member has committed his or her attendance is cancelled or continued, the member is encouraged but not required, to participate in another hearing panel during that same month. >>In the event a hearing is cancelled or continued on the date it is scheduled and a hearing panel has convened, the attendance of each CHR member shall be counted for attendance purposes.

4.9 Minutes. Written minutes shall be kept of all meetings of the CHR. Although recorded minutes are permissible, such recordings shall not serve as a substitute for written minutes. All meetings shall be public and all minutes shall be subject to public inspection except where prohibited by law.

4.10<<Public Requests. Any Miami-Dade County resident or organization concerned with issues of discrimination shall be entitled to request consideration for a hearing

before the CHR. Such request shall be made in writing and shall be delivered to the CHR Director. The Director in consultation with the Chairperson may schedule the request at a regularly scheduled meeting of the CHR, provided that the requesting party is notified in writing at least fifteen (15) days prior to the scheduled meeting. The request shall include all relevant facts concerning the subject of the request, including, if possible, the solution the requesting party believes the CHR should consider. The CHR will not consider a request which deals directly or indirectly with matters pertaining to a case under investigation by staff.

ARTICLE V VACANCIES

5.1 Appointment. For the purposes of filling vacancies of those whose terms are expiring, the CHR shall submit no more than three (3) names of candidates per vacancy to the appointing County Commissioner.

5.2 Resignation. Any member may resign at any time by delivering written notice of such resignation to the Chairperson, the Director of the CHR >>and the appointing County Commissioner. No person shall be eligible to serve on the CHR if, at the time of appointment to the County board, the person has filed a lawsuit against the County that is pending at the time of appointment and that challenges a policy set by the County Commission, unless the County Commission by two-thirds (2/3) vote of its membership waives this requirement. No person sitting on the CHR may file a lawsuit against the County that challenges a policy set by the County Commission without relinquishing his or her seat on the CHR unless the County Commission by two-thirds (2/3) vote of its membership waives this requirement.

Additionally, no member of the CHR shall become a candidate for elective political office during his or her term. Should any member of the CHR qualify as a candidate for elective political office, such qualification shall be deemed a tender of resignation from the CHR. No CHR member shall serve on more than two (2) County boards simultaneously, unless the County Commission has by unanimous vote approved the appointment after being advised of all other County board(s) upon which the person sits, provided, however, a person serving on any one of the following boards shall not serve on any other County board simultaneously except as provided by ordinance: Community Council; Community Zoning Appeals Board; Planning Advisory Board; Citizens' Independent Transportation Trust; Housing Finance Authority;

Independent Review Panel; Industrial Development Authority; Health Facilities Authority; Educational Facilities Authority; Commission on Ethics and Public Trust; Environmental Quality Control Board; The Children's Trust; and the Public Health Trust. Notwithstanding the foregoing, a person is prohibited from serving on a County board where such service would violate federal or state law, the Miami-Dade County Home Rule Charter or county ordinance.<<

ARTICLE VI OFFICERS

6.1 Number. The officers of the CHR shall be a Chairperson and First and Second Vice-Chairpersons, and other such officers as may be determined from time to time by the CHR to be necessary or desirable for the efficient administration of CHR business.

6.2 Removal. Any officer may be removed from office upon a >>two-third<< (2/3) vote of the remaining members of the CHR at a >>duly noticed business or special<< meeting called for that purpose, provided that in the case of the special meeting the notice of the meeting shall specify the purpose thereof. >>The CHR may remove an officer for inefficiency, neglect of duty or misconduct in office, but only after a hearing before the CHR and only if he or she has been given a copy of the charges at least ten (10) days prior to the hearing.<<

6.3 Duties.

- (a) The Chairperson of the CHR shall preside at all CHR >>business and special<< meetings. The Chairperson shall appoint members to serve on standing and >>ad hoc<< committees of the CHR. The Chairperson shall have the right to vote at all meetings.
- (b) First Vice-Chairperson. The First Vice-Chairperson shall act in the absence of the Chairperson in the conduct of >>business or special<< meetings and/or appeal hearings and shall perform such duties as may be delegated to him or her by the Chairperson from time to time.
- (c) Second Vice-Chairperson. The Second Vice-Chairperson shall act in the absence of the Chairperson and First Vice-Chairperson in the conduct of meetings and/or appeal hearings and shall perform such duties as may be delegated to him or her by the Chairperson from time to time.

6.4 Term of Office and Elections. Each Officer shall be elected for a two (2) year term, and may be re-elected for an additional two (2) year term. >>Election of the Chairperson, First Vice-Chairperson and Second Vice-Chairperson shall be held every two (2) years in _____ of said year. Nominations for Chairperson, First Vice-Chairperson and Second Vice-Chairperson shall be at least one month prior to the election.<<

ARTICLE VII

CONFLICT OF INTEREST

>>7.1 Conflict of Interest All CHR members shall comply with all applicable federal, state and county Code of Ethics governing financial interest, ownership or other business disclosure and conflict of interest rules. CHR members shall not vote on any matter where they have a conflict of interest. CHR members with a conflict of interest must recuse themselves from voting. CHR members shall refrain from participating or involving his or herself in any discrimination matter where said matter is being investigated by the CHR Director or the reviewed by a CHR hearing panel. CHR members shall publicly disclose any possible conflict of interest regarding a case brought before them prior to the commencement of an appeal hearing. If a member believes he or she has a conflict of interest, said member shall seek a written opinion from the Miami-Dade Commission on Ethics and Public Trust.

7.2 Ex Parte Communication No member shall engage in or encourage ex parte communication with any party appearing before the CHR. CHR members shall disclose in writing any ex parte communication relative to any pending case before the CHR by any party to the proceeding, or by any person who has a direct or indirect interest in the proceeding, or by any authorized representative or counsel.

7.3 Exceptions. Notwithstanding Sections 7.1 of this Article,<< CHR members and employees >>are not prohibited<< from participating in organizations or projects endorsed or supported by the CHR. Nevertheless, CHR members and employees should avoid any action that could possibly be interpreted as a use of CHR membership or employment for direct or indirect financial gain through the furthering of the economic interests of an organization or project with which they are affiliated.

>>ARTICLE VIII

STAFF SUPPORT

8.1 Support Staff. The CHR shall have assistance from staff designated by the County Mayor and the County Attorney's Office. Staff shall maintain and keep the records of the CHR; prepare, in cooperation with the Chairperson, the agenda for each meeting; be responsible for the preparation of orders, subpoenas, reports, minutes, documents, resolutions, correspondence or any other documents as the CHR may direct; and generally administer the business and affairs of the CHR subject to budgetary restrictions.

ARTICLE IX

MISCELLANEOUS

9.1 Reports. The Chairperson shall present to the County Commission on an annual basis a written report describing the CHR's activities related to enforcement of Chapter 11A of the Code of Miami-Dade County and any other matters of importance affecting the civil rights of citizens of Miami-Dade County. Subject to the approval of the CHR, from time to time the Chairperson or any member of the CHR may also make oral presentations and/or reports to the County Commissioners as the need arises.

9.2 Amendments. These bylaws may only adopted, promulgated, amended or rescinded following a public hearing and subject to the approval of the County Commission. <<