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**SOUTH CAROLINA HUMAN AFFAIRS COMMISSION**

CHAPTER 65

Statutory Authority: 1976 Code Sections 31-21-30 and 31-21-100

65-233. Pleadings, Motions and Discoveries.

**Synopsis:**

Regulation 65-233 governs the procedures for administrative hearings before a panel of commissioners following a reasonable cause determination under the Fair Housing Law.

Notice of Drafting for the proposed amended regulation was published in the *State Register* on September 23, 2016.

**Instructions:**

Replace Regulation 65-233 as printed below.

**Text:**

65-233. Pleadings, Motions and Discoveries.

A. Every pleading, motion, brief or other document shall contain a caption setting forth the title of the proceeding, the docket number assigned, if any, and the designation of the type of document (e.g. complaint, answer or motion to dismiss).

B. Every pleading, motion, brief, or other document filed by a party shall be signed by the party, the party’s representative, or the attorney representing the party, and must include the signer’s address and telephone number. The signature constitutes a certification that the signer has read the document; that to the best of the signer’s knowledge, information, and belief there is good ground to support the document; and that it is not interposed for delay.

C. Timely filing. The Chief Hearing Commissioner may refuse to consider any motion or other pleading that is not filed in a timely fashion and in compliance with this rule.

D. The Commission shall prepare a formal complaint in a form that complies with these rules. All complaints filed under this section shall be verified by the aggrieved person.

E. Within three days after the issuance of a complaint, the Commission shall file the charge with the Chairman and serve copies (with the additional information required under paragraph F. of this section) on the respondent and the aggrieved person on whose behalf the complaint was filed.

F. The complaint shall consist of a short and plain written statement of the facts upon which the Commission has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur. The following notifications shall be served with the complaint:

(1) The notice shall state that a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed may elect to have the claims asserted in the complaint decided in a civil action in lieu of an administrative proceeding. This notice shall state that the election must be made no later than twenty days after the receipt of the service of the complaint. The notice shall state that the notification of the election must be served on the Commission, the respondent, and the aggrieved party of whose behalf the complaint was filed.

(2) The notice shall state that if no person timely elects to have the claims asserted in the complaint decided in a civil action, an administrative proceeding will be conducted. The notice shall state that if an administrative hearing is conducted:

(a) The parties will have an opportunity for a hearing at a date and place specified in the notice.

(b) The respondent will have an opportunity to file an answer to the complaint within thirty days of the date of service of the complaint.

(c) The aggrieved person may participate as a party to the administrative proceeding by filing a timely request for intervention.

(d) All discovery must be concluded 15 days before the date set for hearing.

(3) The notice shall state that if at any time following the service of the complaint on the respondent, the respondent intends to enter into a contract, sale, encumbrance, or lease with any person regarding the property that is the subject of the complaint the respondent must provide a copy of the complaint to the person before the respondent and the person enter into the contract, sale, encumbrance or lease.

G. Within 30 days after the service of the complaint, a respondent contesting material facts alleged in a complaint shall file an answer.

H. Request for intervention.

Upon timely application, any aggrieved person may file a request for intervention to participate as a party to the proceeding. Requests for intervention submitted within thirty days after the filing of the complaint shall be considered to be timely filed.

I.(1) The Commission may amend its complaint once as a matter of right prior to filing of the answer.

(2) Upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, the Chief Hearing Commissioner may allow amendments to pleadings upon motion of the party.

(3) When issues not raised by the pleadings are reasonably within the scope of the original complaint and have been tried by the express or implied consent of the parties, the issues shall be treated in all respects as if they had been raised in the pleadings and amendments may be made as necessary to make the pleading conform to evidence.

(4) The Chief Hearing Commissioner may, upon reasonable notice, permit supplemental pleadings concerning transactions, occurrences or events that have happened or been discovered since the date of the pleadings and which are relevant to any of the issues involved.

J.(1) Any application for an order or other requests shall be made by a motion which, unless made during an appearance before the panel, shall be made in writing. Motions or requests made during an appearance before the panel shall be stated orally and made part of the transcript. All parties shall be given a reasonable opportunity to respond to written or oral motions or requests.

(2) Within five days after a written motion is served, any party to the proceeding may file an answer in support of, or in opposition to, the motion. Unless otherwise ordered by the Chief Hearing Commissioner, no further responsive documents may be filed.

(3) The Chief Hearing Commissioner may order oral argument on any motion.

K. Either party may cause to be taken the depositions of witnesses within or without the State. Such depositions shall be taken in accordance with and subject to the same provisions, conditions and restrictions as apply to the taking of like depositions in civil actions at law in the courts of common pleas of this State; and the same rules with respect to the giving of notice to the opposite party, the taking and transcribing of testimony, the transmission and certification thereof and matters of practice relating thereto shall apply.

L. The Chief Hearing Commissioner shall on its own behalf, or, upon request, on behalf of any other party to the case, issue in the name of the Commission subpoenas for the attendance and testimony of witnesses and the production and examination of books, papers and records.

M. The Court of Common Pleas shall, on application of the Commission, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and records and shall have the power to punish as for contempt of court, by a fine or imprisonment or both, the unexcused failure or refusal to attend and give testimony or produce books, papers and records as may have been required in any subpoena issued by the Commission.

N. If a party fails to comply with discovery, the hearing panel may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit the party failing to comply from introducing evidence or otherwise relying upon, testimony relating to the information sought;

(3) Permit the requesting party to introduce secondary evidence concerning the information sought;

(4) Strike any appropriate part of the pleadings or other submissions of the party failing to comply with such order; or

(5) Take such other action as may be appropriate.

**Fiscal Impact Statement:**

No additional state funding is requested. The Agency estimates that no additional costs will be incurred by the state in complying with the proposed amendments to 65-233.

**Statement of Rationale:**

Regulation 65-233 should be renumbered to avoid citation errors.