804 CMR 1.00: RULES OF PROCEDURE

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1.01: Scope and Purpose

804 CMR 1.00 establishes rules for procedure and practice before the Massachusetts Commission Against Discrimination. The purpose of 804 CMR 1.00 is to achieve a just, speedy and fair determination of matters before the Commission in the service of its mission to eradicate discrimination in the Commonwealth. In the interests of justice, the Commission may exercise its discretion and relax the application of 804 CMR 1.00. The Commission shall issue such orders and fashion such relief as shall vindicate the rights of victims of discrimination and effectuate the purposes of the statutes it enforces.

1.02: Definitions

As used in 804 CMR 1.00:

Commission means the Massachusetts Commission Against Discrimination (MCAD) as constituted under M.G.L. c. 6, § 56, including Commissioners and Commission employees.

Complainant means any person who files a complaint with the Commission.

Complaint means a document containing allegations of unlawful discrimination filed with the Commission.

Counsel means an attorney in good standing who has entered a notice of appearance in a matter pending before the Commission, including counsel for the Commission.

Counsel for the Commission means an attorney employed by the Commission who prosecutes a complaint on behalf of the public interest and represents the Commission in judicial and administrative proceedings.

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Document means any paper document or electronically stored information including, but not limited to, writings, drawings, books, records, graphs, charts, photographs, sound recordings, video recordings, images and other data or data compilations, stored in any medium from which information can be retrieved and made into a reasonably usable form.

Duly Authorized Representative means any person who is not an attorney and is authorized by a party to act and communicate on their behalf with the Commission pre-probable cause.

Ex Parte means without notice to or argument from the other party or parties.

Filing means the submission of a document or information through the MCAD Case Portal unless alternative means of filing are specified in 804 CMR 1.00.

Full Commission means at least three Commissioners acting together.

Investigative Disposition means the official document issued by the Commission upon conclusion of the investigation containing the determination of the Commission.

MCAD Case Portal means the online access point to the Commission's case management system available through its website, which provides parties and representatives with the ability to file complaints, motions, and other documents, access case information, make requests, and communicate with the Commission.

Moving Party means the party who files a written motion at any time or moves for relief verbally during a Commission proceeding.

Order means an instruction, ruling, direction, or decision of the Commission.

Party means the complainant, respondent, and any person permitted to intervene in a Commission proceeding; after certification to public hearing, the Commission is the primary party to the proceeding and the complainant becomes the intervening party in accordance with M.G.L. c. 151B, § 5.

Person means any natural person, corporation, trust, partnership, incorporated or unincorporated association, limited liability company, or any legal entity, and shall not mean artificial intelligence.

Personal Service means the delivery of the notice or process to the person to whom it is directed, which in the case of a natural person means, either by delivery in hand or by leaving copies at the last and usual place of abode of such person, and in the case of a legal entity, means delivering notice or process in hand to an officer, managing or general agent or person in charge of the business at the principal place of business, or by delivering such copies to any other agent authorized by appointment or by law to receive service of process.

Post-probable Cause means the period of time after the issuance of a probable cause disposition.

Preliminary Appeal means a complainant's appeal of an investigative disposition where probable cause is not found, except for dismissals pursuant to 804 CMR 1.08(1)(a), (b), (d), and (e), as provided for in M.G.L. c. 151B, § 5 and otherwise known as a preliminary hearing.

Pre-probable Cause means the period of time between the filing of a complaint and the issuance of an investigative disposition during which the Commission is investigating the complaint, including the preliminary appeal process.

Probable Cause means there is sufficient evidence upon which a fact finder could form a reasonable belief that it is more probable than not that a respondent committed an unlawful practice or violated a statute under the Commission's jurisdiction.

Pro Hac Vice means admission of an attorney who is not a member of the Massachusetts bar to appear and practice at the Commission for a particular case only.

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Pro Se means a person appearing on their own behalf and without a representative.

Pseudonym means a fictitious name used to conceal the identity of a complainant.

Public Hearing means the adjudicatory hearing held at the Commission pursuant to M.G.L. c. 151B, § 5 in which the respondent answers those claims certified to hearing by the Commission.

Representative means counsel or a duly authorized representative.

Respondent means the person, business, employer, labor organization, employment agency, housing provider, real estate broker or agent, lender, appraiser or any other person or entity alleged to have committed unlawful discrimination in a complaint filed with the Commission.

Sua Sponte means an action taken by the Commission of its own accord which does not require a motion or request from a party.

Subpoena Duces Tecum means an order commanding the production of documents or tangible things; such order may be included in a subpoena commanding testimony or it may be issued independent of or in *lieu* of testimony.

1.03: Authority for the Administration of Complaints

In all matters involving the administration of complaints filed with the Commission, the authority to take any action shall be in accordance with M.G.L. c. 151B and M.G.L. c. 6, § 56, and Commissioners may designate Commission staff to execute their statutory duties regarding the administration of complaints.

1.04: Complaint Filing, Amendment, and Withdrawal

(1) Who May File. A complaint alleging violations of the statutes enforced by the Commission may be filed at the Commission by any of the following:

(a) A person claiming to be aggrieved by the alleged violation(s) or a parent or guardian filing on behalf of an aggrieved minor child;

(b) Counsel representing a person claiming to be aggrieved by the alleged violation(s);

(c) An organization whose purpose includes the elimination of the unlawful practice(s) which is the subject of the complaint and whose members include one or more persons claiming to be aggrieved by the alleged violations, provided that the injured person(s) shall be named if the complaint seeks victim specific relief;

(d) The Attorney General or their authorized representative provided that the injured person shall be named if the complaint seeks victim specific relief; or

(e) The Commission, pursuant to 804 CMR 1.18.

(2) Manner of Filing.

(a) A complaint filed by a *pro se* person or by the Commission, pursuant to 804 CMR 1.18, shall be filed in one of the following manners:

1. A complaint may be filed directly through the MCAD Case Portal.
2. A complaint may be filed by visiting any of the Commission's offices during regular business hours and receiving assistance in filing the complaint in the MCAD Case Portal.
3. A complaint may be filed with the Clerk's Office by U.S. Mail.

(b) A complaint filed by counsel or an organization shall be filed directly through the MCAD Case Portal.

(c) Pseudonym complaints filed by any person shall conform with the procedures outlined in 804 CMR 1.04(7) and shall only be filed with the Clerk's Office by U.S. Mail or by visiting any of the Commission's offices during regular business hours. Pseudonym complaints filed through the MCAD Case Portal shall be administratively dismissed without prejudice.

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(3) Time of Filing. A complaint shall be filed within 300 days after the alleged unlawful conduct; provided, however, that a complaint alleging violations of M.G.L. c. 151C shall be filed within the time limits required by M.G.L. c. 151C. The period in which to file a complaint under any statute within the Commission's jurisdiction commences on the date that the Complainant knew or should have known of the claim of discrimination.

(4) Exceptions to Time of Filing. A complaint may be filed beyond the time limits within 804 CMR 1.04(3) under the following circumstances:

(a) Collective Bargaining Agreement Grievance. When a grievance on behalf of an individual is filed pursuant to a collective bargaining agreement, the individual may file a complaint based on the same facts within 300 days of when they knew or should have known that the matters raised in the grievance would support a claim of discrimination. The Commission may stay its investigation until any such grievance proceedings have concluded.

(b) Continuing Violation. When facts are alleged which indicate unlawful conduct is of a continuing nature and part of an ongoing pattern of discrimination, the complaint may include actions outside of the statutory filing period so long as the last discriminatory act in the pattern occurred within the statutory filing period.

(c) Mediation Prior to Filing of Complaint. When an aggrieved person enters into an agreement to voluntarily mediate the alleged discriminatory acts prior to filing a complaint at the Commission but within the statutory filing period, the time for filing may be tolled subject to the following conditions:

1. Every party is represented by an attorney;

2. The parties execute an agreement, signed by the parties, their attorneys, and the mediator, which states the nature of the dispute, the intent to mediate the dispute, a request to toll the statutory filing deadline to pursue mediation, a commitment by the attorneys and mediator to conduct the mediation within 90 days, and an agreement to promptly report the outcome of the mediation to the Clerk's Office;

3. The parties submit the agreement executed pursuant to 804 CMR 1.04(4)(c)2. to the Clerk's Office *via* email or U.S. Mail within the statutory filing deadlines provided for in 804 CMR 1.04(3). The agreement shall only be available to the parties and not the public consistent with all mediation documents on file with the Commission per the confidentiality outlined in 804 CMR 1.06; and

4. If the parties are unable to resolve the matter through mediation, the complainant shall file a complaint pursuant to 804 CMR 1.04(2) within 120 days of filing the agreement to mediate with the Clerk's Office, and the complaint will be deemed filed on the date the agreement to mediate was filed with the Commission. The complainant shall notify the Commission of the previous filing of the agreement to mediate in order for the Commission to adjust the filing date of the complaint.

(d) Equitable Tolling. The deadline for filing a complaint with the Commission may be equitably extended in those cases where the complainant is excusably ignorant of the statutory filing period, or where respondent, the Commission, or a third-party has affirmatively misled the complainant, or otherwise prevented the complainant from filing, as determined by the Commission.

(5) Form. All complaints shall be in writing. Complaints filed under 804 CMR 1.04(1)(a) shall be signed and verified by the complainant. Verification consists of a signed statement, under the pains and penalties of perjury, by the complainant that they have read the complaint and that the allegations contained therein are true to the best of their knowledge. Complaints filed pursuant to 804 CMR 1.04(1)(b), (c), and (d) may be signed by counsel without verification by the complainant.

(6) Content. The complaint shall contain:

(a) The date(s) on which the unlawful discriminatory acts occurred; or, when the acts are of a continuing nature, the period of time during which acts occurred and the specific date of the last discriminatory act;

(b) A concise statement of the alleged discriminatory acts committed by specific persons, if known to the complainant, sufficient to enable the Commission to investigate the claims, and provide notice to the respondent(s) of potential liability;

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(c) If appropriate, a statement indicating that the complaint is on behalf of a proposed class based on the criteria provided in 804 CMR 1.15(5);

(d) Appropriate identification of the complainant(s) and the person(s) alleged to have committed unlawful discriminatory acts, unless proceeding by use of pseudonym pursuant to 804 CMR 1.04(7); and

(e) Factual allegations sufficient to support each claim.

(7) Pseudonym Complaints. In exceptional circumstances, the Commission may determine that the public interest supports allowing a complainant to proceed under a pseudonym. The use of a pseudonym shall not impact the ability to issue protective orders. Any complainant may request to proceed under a pseudonym, including a parent or legal guardian filing on behalf of a minor child, or an individual who was a minor child at the time of the alleged discrimination. The use of a pseudonym may be permitted where the complainant demonstrates a specific overriding need for confidentiality based on substantial safety or privacy interests.

(a) Filing Requirements. A complainant who wishes to proceed by pseudonym shall:

1. File with the Commission a pseudonym complaint along with an ex parte motion to allow the use of a pseudonym, and

2. Submit both documents by U.S. Mail to the Clerk's Office or by visiting a Commission office only;

(b) Form of the Complaint. The pseudonym complaint shall comply with 804 CMR 1.04(1) through (6), except that it shall not include the identity of the complainant;

(c) Ex parte Motion for Use of a Pseudonym.

1. The motion shall be automatically placed under protective order and shall not be disclosed to the public or the respondent pursuant to 804 CMR 1.21(3);

2. The motion shall contain the complainant's full name, and set forth, with specificity, the reasons for supporting the request;

3. If the Commission grants the motion:

a. The complaint shall be processed in accordance with 804 CMR 1.05(2), and, if authorized for formal investigation under 804 CMR 1.05(3), the Commission shall serve the respondent with the pseudonym complaint and the order allowing pseudonym use;

b. If the respondent cannot reasonably identify the complainant, the respondent shall notify the Commission in writing within ten days of receipt of the order. The Commission shall then provide such information it deems necessary to permit the respondent to respond;

c. The parties shall not include the complainant's identity in filings with the Commission. If excluding the complainant's identity from a filing is not possible, the parties shall move for a protective order to prevent public disclosure of the filing.

4. If the Commission denies the motion, the complainant shall have 30 days from the receipt of the denial to consent to the filing of the complaint using their real name. The Commission shall deem the filing date of the complaint to be the date the pseudonym motion was filed.

(8) Amendments to the Complaint in General

(a) Method. A complaint may be amended at any time, either by motion from the complainant, sua sponte by the Commission, or in response to an order for a more definite statement in accordance with 804 CMR 1.05(11).

(b) Amended Content. A complaint or any part thereof may be amended to cure technical defects or omissions, including failure to swear to the complaint, to clarify and amplify allegations made therein, to add or remove respondents, to allege additional acts constituting unlawful discriminatory practices or claims related to or arising out of the subject matter of the original complaint. Previously dismissed claims or respondents may be reinstated by amendment sua sponte or when supported by a motion for reconsideration of probable cause under 804 CMR 1.08(4)(a). Regardless of how the amendment was made, amendments shall relate back to the original filing date of the complaint.

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(9) Procedure for Amending Complaint.

(*a*) *Sua Sponte* Amendments by the Commission. Amendments shall be made in writing by the Commission and may be made at any time after the filing of the complaint and before the issuance of a public hearing decision issued pursuant to 804 CMR 1.12. The Commission shall serve each party with an amended complaint or certification order whenever *sua sponte* amendments are made.

(b) Amendments by Motion from Complainant. Motions to amend the complaint are governed by 804 CMR 1.13.

(c) Amendments to Housing Complaints. Amendments to housing complaints shall be filed within 45 days of the initial filing of the complaint or no later than five days after service of the position statement, whichever is later, unless good cause is shown to enlarge the time. Housing complaints may be amended at the discretion of the Commission. Events occurring after amending a housing complaint may be the subject of a new complaint.

(d) Response to Order for a More Definite Statement. A complainant shall respond to an order issued pursuant to 804 CMR 1.05(11) with the information required by the order. The response must be filed within ten days of receipt of the order. An amended complaint incorporating the response shall be served by the Commission upon each party.

(e) Response to Amendments.

1. Pre-probable Cause Amendments. If a position statement has already been filed, the respondent may amend the position statement within 14 days of receipt of amendments to the complaint. Where no position statement has yet been filed, respondent shall file a position statement in response to amendments in accordance with 804 CMR 1.05(8).

2. Post-probable Cause Amendments. The respondent may not amend the position statement post-probable cause, although they may oppose a post-probable cause motion to amend the complaint in accordance with 804 CMR 1.13 or in response to an order by the Commission.

(10) Standard for Allowance of Amendments after Certification to Public Hearing. Motions to amend a complaint after certification to public hearing may be granted if the amendment arises out of the subject matter of the initial complaint and there is no undue prejudice to a party. Nothing in 804 CMR 1.04(1) limits the discretion of the Commission to amend the complaint to conform to the evidence adduced at hearing.

(11) Notice to the Parties. The Commission shall serve a copy of the original complaint and any amended complaints upon complainant and respondent except where the Commission dismisses the complaint pursuant to 804 CMR 1.05(2).

(12) Withdrawal of Complaint. Withdrawal of a complaint for any reason is subject to the following provisions:

(a) Within the first 90 days of filing a complaint, the complainant may request withdrawal of the complaint for the purpose of removing it to court pursuant to M.G.L. c. 151B, § 9 or for other reason, including settlement, and such request shall be in writing and shall set forth the reasons therefor.

(b) The Commission may grant or deny a request to withdraw within the first 90 days of filing a complaint as the public interest requires.

(c) After 90 days of filing the complaint, the complainant may withdraw the complaint as of right for any reason, including removal to court pursuant to M.G.L. c. 151B, § 9 or settlement, upon written notice to the Commission.

(d) If a complainant files a complaint in court pursuant to M.G.L. c. 151B, § 9 without first withdrawing the complaint pursuant to 804 CMR 1.04(12)(a) or (c), the Commission may consider the complaint withdrawn as of the court filing date.

(e) Withdrawal of a complaint at any time shall not affect the Commission's right to initiate a complaint based upon the same allegations, and such Commission initiated complaint shall relate back to the date of filing of the individual complaint.

(13) Additional Requirement for Withdrawal of Complaint by Removal to Court. Any person who has withdrawn a complaint before the Commission to file an action in any court of the Commonwealth or in any federal court, which includes a claim under M.G.L. c. 151B, M.G.L. c. 151C, M.G.L c. 272, §§ 92A, 98, or 98A, or any other statutes under the jurisdiction of the Commission, shall promptly provide the Commission with a copy of the complaint filed in court.

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1.05: Investigation and Answer of Complaint

(1) Preservation of Evidence. Upon notice of the complaint, parties shall preserve all manner and forms of information and documents that are or may lead to evidence relevant to the complaint of discrimination. Failure to so preserve may result in a rebuttable presumption concerning the evidence against the party failing to make such preservation. The Commission may issue sanctions pursuant to 804 CMR 1.22 related to the failure to preserve evidence. For purposes of the duty to preserve evidence, notice of the complaint may occur during preliminary investigation pursuant to 804 CMR 1.05(2)(a) or after formal service of the complaint pursuant to 804 CMR 1.05(3).

(2) Preliminary Investigation. The Commission shall undertake a preliminary investigation of a complaint to determine if further investigation utilizing the process within 804 CMR 1.05(4) through (10) would serve the public interest and may dismiss a complaint after preliminary investigation subject to the following provisions:

(a) Manner of Investigation. A preliminary investigation shall be undertaken to decide whether to authorize a complaint for formal investigation or to dismiss the complaint pursuant to 804 CMR 1.05(2)(b). The Commission shall have discretion to investigate complaint details in any manner necessary to achieve these purposes, which may include outreach to the parties, witnesses, and other persons, reviewing documents and gathering additional information.

(b) Grounds for Dismissal. The Commission may dismiss a complaint after preliminary investigation for any of the following reasons:

1. lack of standing;
2. lack of jurisdiction;
3. untimeliness;
4. failure to state a claim of discrimination;
5. frivolous claims;
6. allegations are implausible or incapable of verification;
7. the alleged discriminatory conduct has been sufficiently remediated or resolved;
8. insufficient nexus between protected class and allegedly discriminatory conduct; or
9. the public interest requires focusing Commission resources on complaints with greater impact on the mission to eradicate discrimination.

(c) Notice of Dismissal. If the Commission determines that authorization of a formal investigation would not serve the public interest pursuant to 804 CMR 1.05(2), the Commission shall state the reasons for the determination in a dismissal notice served upon complainant and any respondent notified of the complaint. Such dismissal notice, whether issued within the first 90 days of the filing of the complaint or later, shall constitute authorization for the complainant to pursue a civil action pursuant to M.G.L. c. 151B, § 9.

(d) Appeal of Dismissal. The complainant may appeal a dismissal issued pursuant to 804 CMR 1.05(2)(b) by filing a notice of appeal pursuant to 804 CMR 1.08(4)(b).

(3) Notice of Authorization of Formal Investigation. Upon the authorization of a formal investigation, the Commission shall serve respondent with the complaint. Service to respondent shall include notice of their procedural rights and obligation to respond.

(4) Manner of Formal Investigation. Upon authorization pursuant to 804 CMR 1.05(3), the Commission may undertake investigation of the complaint by field visit, written or oral inquiry, review of evidence submitted, conference, or any other method deemed suitable within the discretion of the Commission, none of which shall be subject to 804 CMR 1.10. Such investigation may include, but is not limited to:

(a) Interviews of parties, witnesses, or other persons;

(b) Requests for production or inspection of documents and other tangible things;

(c) Issuance of subpoenas requiring the attendance of persons or the production for examination of documents and other tangible things in accordance with 804 CMR 1.14;

(d) Requests for information from any party;

(e) Conducting depositions; and

(f) Seeking input from parties in preparing formal information requests or conducting investigative conferences.

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1.05: continued

(5) Prompt Investigation.

(a) Housing Complaints. The investigation of a complaint alleging discrimination in housing cases shall be completed in no more than 100 days after receipt of the complaint, unless it is impracticable to do so.

(b) Complaints Other than Housing Complaints. The investigation of a complaint alleging discrimination in all areas within the jurisdiction of the Commission other than housing complaints shall be completed in no more than 18 months following receipt of the complaint, unless it is impracticable to do so.

(c) Notification of Delay. The Commission shall notify the parties if it is unable to complete the investigation within the time periods in 804 CMR 1.05(5)(a) and (b).

(6) Commission's Right to Investigate. No waiver or other agreement signed by any individual shall affect the Commission's right to investigate any complaint filed before it or to initiate a complaint to enforce the Commonwealth's anti discrimination statutes. The Commission may investigate information related to allegations of unlawful discrimination prior to initiating proceedings under 804 CMR 1.18.

(7) Deferral of Investigation. Whenever the Commission has reason to believe that another forum, having jurisdiction over the parties and subject matter contained in a complaint filed with the Commission, is conducting a prompt and thorough investigation of such complaint in a manner consistent with the requirements and standards of the Commission, the Commission may defer the investigation of the complaint until such other forum has completed its investigation or resolved the complaint, subject to the following provisions:

(a) The Commission shall notify the parties in writing of any decision to defer investigation of a complaint until after investigation or resolution of such complaint by another forum.

(b) Upon the conclusion of the investigation or resolution of the complaint by another forum, the Commission shall make a determination in accordance with 804 CMR 1.08(1)(a).

(8) Answer to the Complaint: Position Statement.

(a) Form and Timing. Each respondent shall file an answer to the complaint in the form of a position statement as follows: The position statement shall be filed either within 21 days of receipt of the notice of authorized formal investigation or within 21 days of receipt of an amended complaint filed pursuant to 804 CMR 1.04(9)(d) if the amended complaint is received before the filing of the position statement. Upon written request by the respondent, and for good cause shown, the Commission may grant an extension in which to file the position statement not to exceed 21 days absent exceptional circumstances.

(b) Failure to File. Upon failure to provide a position statement, the Commission may issue a notice of consequences in accordance with 804 CMR 1.07(1).

(c) Service. Each respondent shall serve the position statement upon the Commission, the complainant, and counsel.

(d) Content. The position statement shall assert all jurisdictional and other defenses which the respondent wishes to raise and shall also contain a full and complete description of the respondent's positions in response to all allegations of the complaint. The position statement shall be signed and affirmed by the respondent. Signature and affirmation shall include:

1. A signature under the pains and penalties of perjury by each respondent, which in the case of a corporate respondent shall be a principal of respondent, or a person, other than counsel, authorized to act for the respondent; and

2. If a respondent is represented by an attorney, the position statement shall also be signed by counsel.

(e) Amendments. A position statement may only be amended in accordance with 804 CMR 1.04(9)(e).

(9) Rebuttal to the Position Statement.

(a) Rebuttal Encouraged. Rebuttals to the position statement are not required, but are strongly encouraged and may be requested by the Commission to assist in the investigation of the complaint.

(b) Form and Timing. Within 21 days of service of a position statement or a request for rebuttal from the Commission, a complainant may file a rebuttal to the respondent's position statement. Rebuttals shall be in writing, except that *pro se* complainants may be permitted

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by the Commission to provide a verbal rebuttal. Upon written request of the complainant, and for good cause shown, the Commission may grant an extension of not more than 21 days to file the rebuttal absent exceptional circumstances.

(c) Service. A complainant shall serve a copy of the written rebuttal on a *pro se* respondent or on respondent's representative, unless the rebuttal is subject to a protective order pursuant to 804 CMR 1.05(12).

(10) Investigative Conference.

(a) Notice. The Commission may convene one or more investigative conferences for the purpose of obtaining evidence, identifying issues in dispute, ascertaining the positions of the parties, and exploring the possibility of settlement. Notice of the investigative conference shall be provided to all parties at least 14 days prior thereto and may identify the individuals requested to attend on behalf of a party.

(b) Rescheduling. Parties may request to reschedule the investigative conference for good cause by submitting a written request to the Commission, which shall be granted at the discretion of the Commission.

(c) Participants. A party may be accompanied at an investigative conference by their representative. An attorney for a party not previously having entered an appearance shall do so at the beginning of the investigative conference. Participation by any other person other than a representative shall be at the discretion of the Commission.

(d) Conduct. The Commission shall conduct the investigative conference and control the proceedings. Parties and their representatives may be questioned by the Commission about the issues under investigation, and may be permitted to make a brief statement. No audio, visual, digital, or other verbatim recording of the conference may be made. The Commission shall decide who shall be heard and the order in which they are heard. The Commission may exclude witnesses and other persons from the investigative conference.

(e) Failure to Attend. The failure of a complainant to attend the investigative conference after due notice may result in an adverse disposition in accordance with 804 CMR 1.08. The failure of a respondent to attend the investigative conference after due notice may result in investigative default in accordance with 804 CMR 1.07. The Commission may sanction any party failing to attend or requesting more than one continuance without good cause as provided for in 804 CMR 1.22.

(11) Motion for More Definite Statement. If a complaint is so vague or ambiguous that the respondent cannot reasonably be expected to take an informed legal position concerning the relevance of evidence sought, the Commission may *sua sponte*, or upon motion, order a more definite statement. A motion for a more definite statement is subject to 804 CMR 1.13 and shall be filed within ten days of receipt of the complaint. Such motion shall describe the defects complained about and details desired. The complainant's response to an order for a more definite statement is governed by 804 CMR 1.04(9)(d).

(12) Protective Orders. A party may request a protective order to prevent the disclosure of information provided during the investigation for good cause shown. The Commission may seek a response from the non-requesting party. Information that is subject to a protective order as requested by a party or issued *sua sponte* by the Commission shall not be disclosed during the investigation of the matter, but, unless otherwise provided, may be subject to discovery by the parties after an investigative disposition.

1.06: Mediation

(1) Mediation. The Commission may offer the parties mediation aimed at resolution of the complaint prior to the issuance of an investigative disposition or a final decision. Mediation offered to the parties by the Commission is subject to M.G.L. c. 233, § 23C, and the following conditions:

(a) The Commission does not abrogate its obligation to vindicate the public interest by offering mediation to the parties.

(b) Pursuant to 804 CMR 1.06(1)(a), the confidentiality required by M.G.L. c. 233, § 23C applies to the Commission as a whole. Details of a mediation remain confidential within the Commission and confidential mediation materials not otherwise discoverable shall not be disclosed in any judicial or administrative proceeding, including public hearings held pursuant to 804 CMR 1.12, 1.18, or 1.19.

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(c) The Commission may cancel or terminate its efforts to mediate a complaint if: any party fails or refuses to confer with the Commission; any party fails to make a good faith effort to resolve any dispute; the complainant fails to accept a reasonable settlement offer as provided in 804 CMR 1.09(11); the mediation does not serve to vindicate the public interest; or the Commission finds, for any reason, that voluntary agreement is not likely to result.

(d) All parties shall attend mediation with authority to settle the matter.

(e) Representation for the parties at a mediation shall be consistent with 804 CMR 1.15.

1.07: Investigative Default Procedure

(1) Notice of Consequences for Failure to Answer or Participate. If a respondent fails to answer a complaint or otherwise fails to participate in the investigation, the Commission may serve upon respondent a notice of consequences. The notice of consequences shall list available sanctions for failing to answer or participate, which include, but are not limited to:

(a) The issuance of a probable cause determination in accordance with the allegations of the complaint; and

(b) A waiver of respondent's right to pursue reconsideration of the probable cause determination pursuant to 804 CMR 1.08(4)(a).

(2) Response to Notice of Consequences. The respondent shall file a position statement with the Commission within ten days of receipt of the notice of consequences or take any other action required by the notice of consequences to avoid an order and entry of default imposing sanctions pursuant to 804 CMR 1.07(3).

(3) Order and Entry of Investigative Default.

(a) If respondent fails to respond to the notice of consequences as required by 804 CMR 1.07(2), the Commission may issue an order and entry of investigative default, imposing one or more of the sanctions available under 804 CMR 1.07(1) and 804 CMR 1.22.

(b) After the imposition of sanctions, the Commission may take the following additional actions:

1. Order that a matter be processed pursuant to 804 CMR 1.19;

2. Seek relief in the Superior Court for a violation of M.G.L. c. 151B, § 8, pursuant to M.G.L. c. 214, § 3(12) or (13); and

3. Any other relief against the defaulting party or its representative as is necessary and appropriate to enforce the provisions of M.G.L. c. 151B, § 5.

(4) Removal of Default. Within 14 days of the order and entry of investigative default, the respondent may petition the Commission for the removal of investigative default, for good cause shown. The respondent's assertion of good cause shall be in affidavit form and shall include all information sought by the Commission, including a position statement if required by the notice of consequences.

1.08: Investigative Dispositions, Complaint Dismissals and Appeal

(1) Types of Investigative Dispositions. In addition to an investigative disposition issued under 804 CMR 1.05(2), the Commission may conclude the investigation of a complaint as follows:

(a) Substantial Weight Granted to Investigation by Another Forum. After deferral of an investigation pursuant to 804 CMR 1.05(7), if it appears that the Commission's requirements and standards have been met, the Commission may accord substantial weight to the findings or resolution of the other forum and close the investigation or prosecute the complaint pursuant to 804 CMR 1.08(1)(f)1.

(b) Withdrawal of Complaint. The Commission shall dismiss a complaint properly withdrawn pursuant to 804 CMR 1.04(12), although it may decide to file a Commission initiated complaint based on the same allegations pursuant to 804 CMR 1.18.

(c) Lack of Jurisdiction. Whenever the Commission determines that the Commission lacks jurisdiction over the parties or subject matter of the complaint, the Commission shall dismiss the complaint and shall notify the parties in writing, stating the reasons therefor.

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(d) Administrative Dismissal. The Commission may administratively dismiss a complaint for reasons including, but not limited to, bankruptcy, death of a party, inability to locate a party, adjudication by another forum, unreasonable refusal by complainant to cooperate with processing the case, failure to participate, or refusal to accept a reasonable settlement offer pursuant to the criteria of 804 CMR 1.09(11). In addition, conduct providing grounds for sanctions in 804 CMR 1.22 is an independent basis for administrative dismissal of the complaint. Administrative dismissal shall be subject to the following provisions:

1. Before dismissing a matter because of inability to locate a party, the Commission shall provide notice to the party stating that the matter shall be dismissed if a response is not received within 30 days. Such notice shall be provided to the last address reported to the Commission by the party. The Commission shall allow 30 days for response before administratively dismissing the matter.

2. Unreasonable refusal by complainant to cooperate with processing of the case may include, but is not limited to, failure to provide information, materials or responses which are necessary for investigation of the complaint, failure to cooperate with counsel for the Commission in the prosecution of the complaint, or failure to comply with an order issued by the Commission.

3. When practicable, in any matter administratively dismissed, written notice shall be provided to the complainant, including the reasons for the dismissal.

4. An administrative dismissal shall not constitute a final order for purposes of exercising rights provided under M.G.L. c. 151B, § 6 or M.G.L. c. 30A.

5. The Commission may reopen an administratively dismissed case for good cause shown.

(e) Settlement. The Commission may dismiss a complaint due to settlement of the complaint under the following conditions:

1. Notification to Commission. Parties shall promptly notify the Commission in writing upon reaching a settlement.

2. Review and Availability of Settlement Terms.

a. The Commission may require the parties to submit the terms of such settlement in writing to the Commission for review.

b. The Commission may keep settlement terms confidential at the request of the parties unless confidentiality is precluded by law, Commission contractual agreements, or compelling public policy considerations.

c. If it appears from the facts of the complaint and the terms of settlement that the public interest has been served, the Commission may dismiss the complaint without a determination as to whether probable cause existed to credit the allegations of the complaint, and shall so notify the parties in writing.

(f) Determinations after Formal Investigation.

1. Probable Cause. After formal investigation, when a probable cause determination is recommended by the Commission, a Commissioner shall be assigned. A determination of probable cause shall be made when the assigned Commissioner concludes that there is sufficient evidence upon which a fact finder could form a reasonable belief that it is more probable than not that respondent committed an unlawful practice or violated a statute under the Commission's jurisdiction. The assigned Commissioner shall preside over the matter post-probable cause through certification to public hearing.

Right to Elect Judicial Determination. If the Commission finds probable cause to credit the allegations of any housing complaint, the Commission shall immediately serve notice upon complainant and respondent of the right to elect judicial determination of the complaint pursuant to M.G.L. c. 151B, § 5.

2. Lack of Probable Cause. If the Commission determines after formal investigation of the complaint that there is insufficient evidence to support a determination of probable cause to credit the allegations of the complaint, a lack of probable cause determination shall be issued and the complaint shall be dismissed. Notice of a lack of probable cause determination shall be issued within ten days from such determination.

(2) Complaint Dismissals after a Probable Cause Determination. The Commission may dismiss a complaint utilizing the procedures within 804 CMR 1.08(1)(b), (c), (d), or (e) at any time after the issuance of a probable cause determination pursuant to 804 CMR 1.08(1)(f)1., including that the Commission shall dismiss the complaint upon referral to the Attorney General after a party's election of judicial determination of a housing practice pursuant to M.G.L. c. 151B, § 5.

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(3) Notice of Investigative Disposition. The Commission shall provide written notice of the investigative disposition to the parties, including whether the complaint has been dismissed or remains open and subject to further process.

(4) Reconsideration or Appeal of Investigative Disposition.

(a) Motion for Reconsideration of Probable Cause Determination. Any party may move for reconsideration of a probable cause determination for good cause at any time prior to the issuance of a certification order pursuant to 804 CMR 1.11(4), subject to the following requirements:

1. Grounds for a motion for reconsideration of a probable cause determination filed by a complainant shall be limited to argument that the pre-probable cause removal of claims or respondents from the complaint was in error or based on evidence obtained in discovery that supports reinstatement of a previously dismissed claim or respondent.
2. A motion for reconsideration from a respondent which is based on the absence of a genuine issue of material fact shall be filed after the close of discovery and before the issuance of a certification order.
3. Motions for reconsideration shall be served in accordance with 804 CMR 1.13.
4. The Commission shall render a decision on the motion for reconsideration, as soon as reasonably practicable.
5. The Commission may issue an order reversing the probable cause determination, reopening the matter for further investigation, modifying the probable cause determination, amending the complaint, or taking such other action as is deemed necessary in the interests of justice.
6. Upon reversal or modification of a probable cause determination, complainant does not have a right to a preliminary appeal pursuant to 804 CMR 1.08(4)(b) or a right to review under M.G.L. c. 151B, § 6 or M.G.L. c. 30A.

(b) Preliminary Appeal. The complainant may appeal an investigative disposition entered under 804 CMR 1.08(1)(c) and (f)2. as well as a dismissal pursuant to 804 CMR 1.05(2) by filing a notice of appeal within ten days after receipt of the notice of investigative disposition or dismissal. Notices of appeal filed beyond ten days after the receipt of the notice of investigative disposition shall not be allowed. The Commission shall notify all parties of the appeal, provided they received notice of the dismissal of the investigation under 804 CMR 1.05(2)(c). The following provisions apply to all preliminary appeals:

1. All appeals shall be made in writing.
2. The Commission may hold a live hearing at its discretion. No audio, visual, digital, or other verbatim recording of the live hearing may be made. The hearing may be held in person, telephonically, virtually, or in writing at the discretion of the Commission.
3. Written appeals are due within 14 days of the filing of the notice of appeal. Extensions of time to file written appeals will not be granted without a showing of good cause. The Commission shall allow no more than one extension.
4. The Commission shall not consider written appeals filed after the original or extended deadline.
5. Appeals shall include reasons why the determination was made in error and supporting evidence.
6. The preliminary appeal shall not be subject to the requirements of M.G.L. c. 30A and the determination shall not be subject to Full Commission or judicial review under M.G.L. c. 151B, § 6 or M.G.L. c. 30A.
7. If notified of the appeal pursuant to 804 CMR 1.08(4)(b), the respondent may also be permitted to present reasons why the determination should be sustained along with supporting evidence as appropriate.
8. In assessing the appeal, the Commission may request additional information and evidence.
9. The Commission may, upon review of evidence presented:
   a. affirm the disposition;
   b. reverse the disposition and issue a probable cause determination;
   c. reverse the disposition and authorize or continue a formal investigation;
   d. modify the disposition; or
   e. take such other action as deemed necessary in the interest of justice.

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1.09: Conciliation

(1) Conciliation Required after Determining Probable Cause. Upon a determination of probable cause pursuant to 804 CMR 1.08(1)(f)1., the Commission shall endeavor to eliminate the unlawful practice complained of through conference, conciliation, and persuasion in accordance with M.G.L. c. 151B, § 5. In conciliating a complaint, the Commission shall attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent shall satisfactorily remedy any violations of the rights of the aggrieved person, and take such action as shall assure the elimination of discriminatory practices, or the prevention of their occurrence in the future.

(2) Party Obligations.

(a) Attendance at a scheduled conciliation is mandatory, and all parties shall attend conciliation with authority to settle the matter.

(b) The case in support of the complaint at conciliation shall be presented either by counsel for the complainant or by counsel for the Commission. A complainant may not proceed at conciliation without private counsel or without counsel for the Commission in attendance. A complainant's failure to retain counsel or cooperate with counsel for the Commission shall be grounds for dismissing the matter.

(c) At least ten days prior to the conciliation, counsel for complainant or counsel for the Commission shall send a written settlement proposal to respondent.

(d) At least five days prior to the conciliation, the parties shall hold preliminary settlement discussions for the purpose of making a good faith effort to resolve the complaint.

(3) Continuances. Continuances shall not be granted except upon written motion filed in accordance with 804 CMR 1.13 demonstrating good cause, including emergency motions. Non-emergency motions to continue shall be assented to by all parties or filed jointly.

(4) Consequences for Failing to Attend Conciliation. Failure to attend conciliation may result in the imposition of sanctions in accordance with 804 CMR 1.22. A respondent's failure to attend may result in the immediate certification to public hearing pursuant to 804 CMR 1.11, and complainant's failure to attend may result in the administrative dismissal of the complaint pursuant to 804 CMR 1.08(1)(d).

(5) Provisions Sought for the Public Interest. The provisions which may be sought for the vindication of the public interest, include but are not limited to:

(a) Elimination of the discriminatory practice;
(b) Prevention of future discriminatory practices;
(c) Remedial affirmative activities to overcome discriminatory practices;
(d) Apologies;
(e) Reporting requirements;
(f) Monitoring and enforcement activities;
(g) Consent orders or decrees; and
(h) Educational and training efforts.

(6) Relief Sought for Aggrieved Persons. The relief sought for aggrieved persons in conciliation may include, but is not limited to:

(a) Monetary relief in the form of compensatory damages for back pay, front pay, emotional distress, out-of-pocket expenses, interest, and attorney fees and costs;

(b) Equitable relief including, but not limited to, reinstatement to employment, promotion, letters of recommendation or reference, access to the dwelling at issue (or to a comparable dwelling), the provision of services or facilities, an apology and a promise to refrain from engaging in the same or similar discriminatory conduct, reasonable accommodation, or other specific relief; and

(c) Injunctive relief appropriate to the elimination of discriminatory practices affecting the aggrieved person or persons.

(7) Termination of Conciliation Efforts. The Commission may terminate efforts to conciliate a complaint if the respondent fails or refuses to confer with the Commission; the complainant or the respondent fail to make a good faith effort to resolve any dispute; or the Commission finds, for any reason, that voluntary agreement is not likely to result.

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(8) Information Obtained during Conciliation. Nothing that is said or done in the course of conciliation can be used as evidence in a subsequent public hearing held pursuant to 804 CMR 1.12 or in civil actions under M.G.L. c. 151B, § 9.

(9) Review of Compliance with Conciliation Agreements. The Commission may review compliance with the terms of any conciliation agreement. Whenever there is reasonable cause to believe that a respondent has breached a conciliation agreement, the Commission may take appropriate action, including reopening of the matter before the Commission, and the filing of a civil action for enforcement of the terms of the conciliation agreement and seeking appropriate sanctions under M.G.L. c. 151B, § 8.

(10) Conciliation Agreement. A conciliation agreement shall be an agreement between the respondent and the complainant and shall be subject to the approval of the Commission. Such agreement shall be in writing, shall set forth the terms of the agreement, and shall be signed by the parties. In accordance with M.G.L. c. 151B, § 5, the Commission may make public the terms of conciliation when the complaint has been so disposed of.

(11) Failure to Accept Reasonable Settlement Offer. When a formal offer of settlement by a respondent is acceptable to the Commission, but not to the complainant, the Commission may dismiss the complaint and, if timely, the complainant may proceed in the appropriate court of competent jurisdiction under M.G.L. c. 151B, § 9. In making this determination, offers of settlement by a respondent shall be reviewed by the Commission to determine whether the public interest would be served by the continuation of the proceedings. The Commission may consider the following non exhaustive criteria in making this determination:

(a) Probability of success after public hearing;
(b) Reasonableness of offer;
(c) Reasonableness of complainant's refusal, if any;
(d) The amount of the complainant's economic loss, and respondent's degree of responsibility thereof;
(e) Evidence of any emotional distress suffered by the complainant, and respondent's degree of responsibility;
(f) The egregiousness of the discrimination charged; and
(g) Whether the time for filing a civil action, under M.G.L. c. 151B, § 9, has expired.

1.10: Discovery

(1) When Allowed. Discovery may only be conducted pursuant to a discovery order from the Commission. Discovery orders may issue if a matter does not resolve at conciliation conducted pursuant to 804 CMR 1.09.

(2) Contents of Discovery Order. A discovery order shall set forth the time period in which all discovery shall be completed. Permitted discovery may include, but is not limited to, interrogatories to parties, requests for the production of documents and other tangible things, depositions, subpoenas issued subject to 804 CMR 1.14, requests for site examination, and requests for admissions.

(3) Scope of Discovery. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter in the complaint, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any documents or tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought shall be inadmissible at a public hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(4) Interrogatories.

(a) No party shall serve upon any other party as of right more than 30 interrogatories, including interrogatories subsidiary or incidental to, or dependent upon, other interrogatories, however grouped or combined; but the interrogatories may be served in two or more sets, as long as the total number of interrogatories served does not exceed 30. All interrogatories shall be numbered consecutively.

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(b) Each interrogatory shall be answered separately and fully in writing under the pains and penalties of perjury, unless it is specifically objected to, in which event the reasons for objection shall be stated in *lieu* of the answer; each answer or objection shall be preceded by the interrogatory to which it responds. General objections to interrogatories are prohibited. Each objection to an interrogatory shall be specific to that interrogatory and shall have a good faith basis. If a party refuses to answer an interrogatory, the party shall so state and identify each objection asserted to justify the refusal to answer. If a party, after having asserted an objection, answers the interrogatory, the answer shall state either:

1. Notwithstanding the objection no information has been withheld from the answer, or
2. Information has been withheld from the answer because of the objection. Where information has been withheld from the answer, the objecting party shall describe the nature of the information withheld and identify each objection asserted to justify the withholding.

(c) The answers are to be signed by the person making them under the pains and penalties of perjury, the objections by the person or attorney making them.

(d) The party upon whom the interrogatories have been served shall serve answers and objections, if any, within 45 days after the service of the interrogatories.

(5) Requests for Production or Inspection of Documents and Other Tangible Things.

(a) The party upon whom the request is served shall serve a written response and copies of the responsive documents within 30 days after the service of the request. The response shall state, with respect to each item or category, that inspection and related activities shall be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified.

(b) Unless otherwise stipulated or ordered by the Commission:

1. A party shall produce documents as they are kept in the usual course of business or shall organize and label them to correspond to the categories in the request;
2. The producing party may produce copies of the documents, including by electronic means, provided that, if requested, the producing party affords all parties a fair opportunity to verify the copies by comparison with the originals;
3. If a request does not specify a form for producing electronically stored information, a party shall produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and
4. A party need not produce the same electronically stored information in more than one form.

(c) The written response accompanying production shall state either:

1. All responsive documents or things in the possession, custody, or control of the responding party have been produced;
2. After diligent search no responsive documents or things are in the possession, custody, or control of the responding party; or
3. A specific objection made to the request. When specific objection is made, the response shall describe the nature of all responsive documents or things in the possession, custody, or control of the responding party that have not been produced because of the objection.

(6) Depositions.

(a) A party desiring to take the deposition of any person upon oral examination shall include in the notice the time and place for taking the deposition, the name and address of each person to be examined and the manner in which the deposition shall be recorded.

(b) The notice of deposition shall be served at least 14 days prior to the date of the deposition, and the parties shall receive the same notice for third-party depositions.

(c) The parties shall be given 14 days' notice, and an opportunity to quash, prior to the service of a third-party subpoena.

(d) A party may name as a deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. The named organization shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which they shall testify. The

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persons so designated shall testify as to matters known or reasonably available to the organization. If the corporation, partnership or association does business in Massachusetts, it must produce its designee(s) for deposition in Massachusetts.

(e) If a *subpoena duces tecum* is to be served on a person to be examined, the designation of the material to be produced as set forth in the subpoena, shall be attached to the notice.

(f) The party requesting a deposition shall make all necessary arrangements for the taking and recording of depositions, including the cost thereof.

(g) The testimony at a deposition may be recorded by other than stenographic means. The party conducting the deposition shall ensure that the recorded testimony is accurate and trustworthy.

(h) All objections made at the time of the deposition shall be noted by the person taking the deposition. Evidence objected to shall be taken subject to the objection. Counsel for a witness or a party may not instruct a deponent not to answer except where necessary to assert or preserve a privilege or protection against disclosure, to enforce a limitation on evidence directed by the Commission or stipulated in writing by the parties, or to suspend the deposition for the purpose of bringing a motion to terminate or limit the examination where it is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party.

(i) Subject to valid objections to admissibility, depositions or any part thereof may be used for any purpose with respect to witnesses who are unavailable at the hearing or to contradict or impeach the credibility of witnesses who testify at public hearing.

(j) The Commission may order the filing of any deposition transcript with the Commission.

(7) Admissions.

(a) A party may serve upon another party a written request for admission of the truth of matters within the scope of discovery that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents attached to the request.

(b) Each matter of which an admission is requested shall be separately set forth and is deemed admitted unless within 30 days after its service, the party to whom the request is directed serves upon the party requesting the admission:

1. A written statement signed by the party under the pains and penalties of perjury denying the matter or setting forth in detail why it cannot truthfully admit or deny it; or
2. A written objection addressed to the matter, signed by the party or representative. If an objection is made, the reasons shall be stated.

(c) When good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. A party may not give lack of information or knowledge as a reason for failure to admit or deny the request unless the party states that it has made reasonable inquiry and the information known or readily obtainable by such party is insufficient to enable the party to admit or deny. Each response shall be preceded by the request to which it responds. Any admission made is for the purpose of the pending case only and is not an admission for any other purpose nor may it be used in any other proceeding. The maximum number of admissions as of right shall be 50.

(8) Protective Orders. Upon motion by a party or by a person from whom discovery is sought, and for good cause shown, the Commission may issue a protective order limiting discovery as justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. If the motion for a protective order is denied, the Commission may order that any party shall comply with the discovery requests.

(9) Failure to Comply with Discovery. Failure to comply with discovery may result in any of the following orders from the Commission *sua sponte* or upon motion from a party:

(a) An order to comply with discovery containing consequences for further noncompliance;

(b) An order that matters upon which discovery is sought or any other designated facts shall be taken to be established for the purpose of supporting a claim or defense of the party seeking discovery;

(c) An order refusing to allow the noncomplying party to support or oppose designated claims or defenses, or prohibiting them from introducing designated matters in evidence;

(d) An order prohibiting a party from calling witnesses or introducing documents at the public hearing;

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(e) An order dismissing the action or immediate certification to public hearing pursuant to 804 CMR 1.11; and

(f) an order requiring the noncomplying party or the attorney advising the noncomplying party or both to pay monetary sanctions and reasonable expenses, including attorney fees and Commission expenses caused by the noncompliance, in accordance with 804 CMR 1.22.

(10) Stipulations Regarding Discovery Procedure. Unless the Commission orders otherwise, after the issuance of a discovery order pursuant to 804 CMR 1.10(1), the parties may by written stipulation and agreement modify the procedures provided by 804 CMR 1.10(4) through (7).

1.11: Certification of Claims to Public Hearing

(1) Certification. When the Commission determines that the public interest requires a certification of claims to public hearing, it shall issue a certification order in the name of the Commission pursuant to M.G.L. c. 151B, § 5.

(2) Certification Process. The Commission may issue a certification order identifying the claims that shall be certified to public hearing. The Commission may schedule a conference pursuant to 804 CMR 1.11(3) prior to issuance of such order to determine which claims, if any, shall be certified to public hearing.

(3) Certification Conference. The Commission shall serve notice of the certification conference upon all parties and counsel. The Commission may issue an order requiring written submissions by the parties in advance of the certification conference, and failure to provide all written submissions as ordered shall be cause for sanctions in accordance with 804 CMR 1.22. The written submissions shall contain the following:

(a) List of proposed claims to be certified to public hearing;

(b) Affirmative defenses;

(c) Parties, including definition of proposed classes;

(d) Pending motions (*e.g.*, discovery issues, motions for certification, motions for reconsideration of probable cause);

(e) All relief sought, including any monetary and equitable relief and description of the bases on which damages are calculated;

(f) Settlement efforts; and

(g) Any other matter which in the judgment of the Commission is likely to expedite the preparation and presentation of the case.

(4) Certification Order. The certification order shall be in writing, served upon all parties and counsel of record and may provide the following:

(a) Certification of claims to be considered at a public hearing;

(b) Certification of one or more questions of law to the Full Commission; and

(c) Address any other matters the Commission deems appropriate in the public interest, including a denial of certification and reversal of the probable cause determination.

1.12: Public Hearings

(1) In General. The public hearing shall be governed by M.G.L. c. 151B, § 5, M.G.L. c. 30A, § 11, and 804 CMR 1.12, and shall be conducted by an adjudicator appointed by the Commission.

(2) Substitution of Adjudicator. In the event of the unavailability of the original adjudicator to issue a written decision pursuant to 804 CMR 1.12(18), the Commission shall assign another adjudicator to hear any remaining evidence and to review the record, including the hearing transcript, resulting in one of the following outcomes:

(a) In the event the resolution of disputed issues of material fact rests on findings of witness credibility, and a decision cannot be rendered without such findings, the case shall be reassigned for a new hearing. Prior to scheduling a new hearing, the Commission shall hold a status conference with the parties and make good faith efforts at resolving the matter.

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(b) In cases where the decision does not rest on credibility findings, a substitute adjudicator may render the decision. Prior to the issuance of a final decision, the parties may make written requests for proposed findings of fact and conclusions of law and an order and shall be afforded a reasonable opportunity to file objections thereto. Any proposed findings of fact and conclusions of law or proposed orders shall be filed as ordered by the Commission.

(3) Waiver Required. M.G.L. c. 151B, § 9 makes available to the complainant a trial in court as an alternative to public hearing before the Commission. Accordingly, the complainant shall waive the right to remove all claims certified to public hearing prior to the commencement of the public hearing.

(4) Conduct. All parties, witnesses, counsel, and others present at a public hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in the courts of the Commonwealth. Where such standards are not observed, the Commission may take such action as it deems appropriate, including assessing sanctions against a non-complying person pursuant to 804 CMR 1.22, and adjourning the proceedings.

(5) Request for Clarification. Upon written request of a party or by the Commission *sua sponte*, the complaint and certification order may be clarified. In the event there remains a dispute about which claims are certified to public hearing, the Commission may proceed to hear evidence on any and all claims presented and may amend the certification order to conform to the evidence established at the hearing.

(6) Continuance. Any party requesting a continuance shall make such request in writing by motion pursuant to 804 CMR 1.13. Continuances shall be granted only upon a showing of good cause. In any instance in which a continuance results in fees or costs to the Commission or another party, the party requesting the continuance may be required to incur such costs.

(7) Settlement after Commencement of Public Hearing. If after the commencement of a public hearing the matter in dispute before the Commission is settled between the parties and the settlement is acceptable to the Commission, it shall dismiss the matter.

(8) Ex Parte Communications. In any proceeding held pursuant to 804 CMR 1.12 or in any appeal therefrom, no party or counsel shall communicate ex parte with the adjudicator for any reason on any matter related to the proceeding prior to the issuance of a final decision of the Commission pursuant to 804 CMR 1.24 or 1.25.

(9) Protective Orders. Upon motion or *sua sponte*, the Commission may issue a protective order to prevent the public disclosure of information at public hearing or within the record of public hearing for good cause shown and may allow such motion if it is in the public interest. A protective order may provide for the exclusion, limitation, redaction, or impoundment of documentary or testimonial evidence at public hearing or within the public hearing record.

(10) Failure to Appear at Public Hearing. Whenever a party duly notified of the time and place of a public hearing fails to appear at the hearing either in person or by counsel, the party's default shall be entered on the record and notice of the default shall be served within ten days of the entry of default. If the defaulting party is the complainant, the complaint may be dismissed. If the defaulting party is the respondent, the hearing shall be conducted on its scheduled date, and the complainant shall continue to have the burden of establishing liability and remedy notwithstanding the entry of default. Within ten days of receipt of notice of entry of default, the defaulting party may petition the Commission to vacate the default and reopen the case upon a showing of good cause established through affidavit signed under the pains and penalties of perjury. The other parties may file a response to the request for removal of default within ten days of receiving a copy of it. If the case is reopened, the party in default may be ordered to bear the reasonable costs incurred as a result of the default.

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(11) Transcript and Record of Public Hearing.

(a) The record of the public hearing shall consist of the exhibits and either an electronic recording or a transcript of the hearing. If a party arranges to have a stenographer at the public hearing, the stenographic record shall be the official record of the public hearing, the Commission shall not create an electronic recording, and the party arranging for the stenographer shall furnish the Commission at no charge with a certified copy of the transcript within ten days of receipt of the transcript from the stenographer. If there is no stenographer at the public hearing, the Commission shall make an audio recording of the public hearing. A party desiring a copy of the recording shall make a request in writing to the Commission and may be required to pay the cost thereof. A transcription of the electronic record made by a party may be cited if the Commission and all parties agree to accept the transcription as the official record of the public hearing, with a party waiving any objection to the accuracy of such transcript if not made within 20 days of its filing.

(b) The administrative record for the purpose of judicial review under M.G.L. c. 30A, § 14 shall be the record of public hearing in accordance with 804 CMR 1.12(11)(a), together with the certification to public hearing, the complaint as amended, and any post-probable cause motions and orders disposing of such motions at issue in the complaint for judicial review.

(12) Stipulations. Written stipulations of facts may be introduced in evidence, if signed by the persons sought to be bound thereby, or by their authorized representatives. Oral stipulations may be made on the record during the course of a public hearing.

(13) Evidence. The Commission shall not be bound by the rules of evidence observed by courts except for the rules of privilege. The Commission may permit the admission of records, reports, statements or data compilations of public agencies setting forth factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information indicate lack of trustworthiness. Evidence unrelated to the claims certified to public hearing may be deemed irrelevant or not probative of the claims to be decided and, therefore, inadmissible.

(14) Administrative Notice. The Commission may take administrative notice of matters as might be judicially noticed by the courts of the United States or of the Commonwealth, and of technical or general facts within its specialized areas of knowledge.

(15) Oral Argument. The Commission may allow a reasonable time to the parties for oral argument.

(16) Post-hearing Briefs. The parties and any interested person recognized by the Commission shall file a post hearing brief containing proposed findings of fact and conclusions of law and other information as required by the Commission. The brief shall be filed on 8 ½" by 11" paper, when not filed electronically, be typed in no less than 12-point type, and be double spaced, provided that the case caption, footnotes, and quotations may be single spaced. The margins shall be at least one inch. The timing of the filing of the brief and its page limit shall be determined by the Commission.

(17) Other Post-hearing Submissions. The Commission may allow the parties, after a showing of good cause, to file additional evidentiary documents or exhibits within a reasonable time after the completion of the hearing. The Commission may allow reasonable inspection of original documents or tangible things by all parties. The Commission may also require that the parties file additional evidentiary documents or exhibits, including stipulations concerning damages, subsequent to the completion of the hearing.

(18) Public Hearing Decision. The Commission shall issue a decision in writing either dismissing the complaint or granting relief to the aggrieved party for the purposes of effectuating the laws under its jurisdiction, pursuant to M.G.L. c. 151B, § 5. The decision shall contain all findings of fact and conclusions of law necessary to address every claim certified to public hearing. The parties shall be notified in writing of their rights to appeal such decision to the Full Commission. A copy of the decision shall be served upon each party and counsel.

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(19) Request for Award of Attorney's Fees and Costs. Where the complainant prevails at public hearing, the complainant may, within 15 days of receipt of the public hearing decision, petition the Commission for an award of reasonable attorney's fees and costs. Such petition shall include detailed, contemporaneous time records, a breakdown of costs and a supporting affidavit from every attorney for whom fees are sought. The petition shall also include information about fair market hourly rates of attorneys with similar skill and experience performing similar work, which may be in the form of affidavits from attorneys with knowledge of such hourly rates or model fee charts, or other documentation. A respondent may file a written opposition within 15 days of receipt of said petition. To the extent that the respondent appeals an order on a petition for attorney's fees and costs pursuant to 804 CMR 1.23(1)(a), such appeal shall be consolidated with any pending appeal to the Full Commission of the underlying public hearing decision issued pursuant to 804 CMR 1.12(18). A decision on a request for award of attorney's fees and costs incurred at public hearing is a final decision appealable to the Full Commission pursuant to 804 CMR 1.23(1)(a), regardless of whether a party has appealed the underlying public hearing decision to the Full Commission.

1.13: Requests and Motions

(1) Requests. The Commission shall allow parties to make specific requests in *lieu* of motions through the MCAD Case Portal, and all parties and representatives shall use the MCAD Case Portal to make such requests. Such requests include, but are not limited to, requests for reasonable accommodation, requests for language assistance services, requests to withdraw the complaint, requests for mediation, pre-probable cause requests for extensions of time, and pre-probable cause requests for protective orders. If a specific request is available through the MCAD Case Portal, a motion shall not be filed addressing such request.

(2) Motions in General.

(a) Content. Motions shall be made in writing, state with particularity the grounds therefor, set forth the relief sought, and may include a proposed order. Motions shall contain a statement of the reasons, including supporting authorities, why the motion should be granted and may include a request for a hearing. Motions may contain affidavits and other documents setting forth or evidencing facts on which a motion is based.

(b) Filing. All motions filed at the Commission shall be managed and processed by the Clerk's Office.

(c) Format and Length for Motions, Oppositions, Replies, Sur-replies, and Memoranda. All motions, oppositions, replies, sur-replies, memoranda and other documents, except for exhibits, shall be filed on 8 ½" by 11" paper, when not filed electronically, be typed in no less than 12-point type, and be double spaced, provided that the case caption, footnotes and quotations may be single spaced. The margins shall be at least one inch. The title of each document shall appear on the first page thereof. Unless leave of the Commission is provided in advance, all motions, oppositions, and memoranda shall not exceed 20 pages, and any reply or sur reply shall not exceed ten pages.

(d) Sanctions for Noncompliance. The Commission need not act on any motion that fails to comply with the requirements of 804 CMR 1.13.

(3) Pre-probable Cause Motions.

(a) Recognized Motions. As required by 804 CMR 1.13(1), parties and representatives shall make specific requests recognized by 804 CMR 1.00 using the MCAD Case Portal in *lieu* of motion practice. Pre-probable cause motions recognized by the Commission are limited to those enumerated herein, and are required where recognized. The following motions may be filed pre-probable cause:

1. Motion for a More Definite Statement;
2. Motion for Substitution, Joinder, or Amendment of Parties;
3. Motion to Amend Complaint; or
4. Motion to Dismiss. Pre-probable cause motions to dismiss may be filed in *lieu* of the position statement or after a position statement has been filed. Grounds for a pre-probable cause motion to dismiss are limited to showing that:
    a. Claims are filed in court or are being investigated by another forum;

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b. Claims or respondents are outside of the jurisdiction of the Commission;
c. Claims are precluded, or moot for any reason including settlement; or
d. Claims are untimely filed.

(b) Procedure for Filing Pre-probable Cause Motions, Oppositions, Replies, and Sur-replies. All pre-probable cause motions, oppositions, replies, and sur-replies shall be filed independently in the MCAD Case Portal and are subject to the service rules within 804 CMR 1.16(3). A party opposing a motion may file an opposition to the motion within 14 days of service of the motion. The memorandum in opposition shall include a statement, with any supporting authorities, why the motion should not be allowed. Affidavits and other documents setting forth or evidencing facts on which the opposition is based shall be served with the opposition. The moving party may serve a reply within seven days of service of the opposition, following which any opposing party may serve a sur-reply within seven days of service of the reply. Reply and sur-reply memoranda shall be limited to addressing matters raised in the opposition or the reply that were not, and could not have been, addressed previously.

(c) Motion Conferences. In the event the Commission determines that a conference is necessary or shall aid in the disposition of a pre-probable cause motion, the Commission may order the parties to appear to answer questions and present oral argument in support of their respective positions.

(4) Post-probable Cause Motions.

(a) Parties Required to Confer Prior to Filing. Prior to any post-probable cause motion being filed, the parties are required to confer in good faith to attempt to reach resolution of the issues raised and relief being sought. The moving party shall be responsible for arranging said conference. Conferences may be conducted by telephone or other electronic means. All motions filed shall contain a certificate affirming compliance with the requirement to confer. Motions unaccompanied by such a certificate may be denied without prejudice to renew when accompanied by the required certificate.

(b) Procedure for Serving and Filing Post-probable Cause Motions, Oppositions, Replies, and Sur-replies.

1. Original Motion. The moving party shall first serve a copy of the motion and the other supporting documents on every other party or counsel.

2. Opposition to Motions. A party opposing a motion may serve the moving party with a memorandum in opposition within 14 days of service of the motion. The memorandum in opposition shall include a statement, with any supporting authorities, why the motion should not be allowed. Affidavits and other documents setting forth or evidencing facts on which the opposition is based shall be served with the opposition. Opposing parties shall serve on the moving party an original and a copy of the opposition, and serve a copy on every other party.

3. Reply and Sur-reply. Following receipt of the memorandum in opposition, the moving party may serve a reply within seven days of service, following which any opposing party may serve a sur-reply within seven days of service. Reply and sur-reply memoranda shall be limited to addressing matters raised in the opposition or the reply that were not, and could not have been, addressed previously.

4. Filing of Motion Packet through the MCAD Case Portal.

a. Upon receipt of the opposition or a sur-reply, if one is made, the moving party shall attach the original opposition and any reply and sur reply to the original motion and shall file with the Commission through the MCAD Case Portal the combined documents and a document listing the title of each paper in the motion packet within ten days of service of the opposition or, if a reply was served, within ten days of service deadline for sur-reply, unless the moving party has notified all parties that the motion has been withdrawn within ten days of service of the opposition or sur-reply.

b. If the moving party does not receive an opposition within three business days after expiration of the time permitted for service of an opposition, the moving party shall file the motion with the Commission and include an affidavit reciting compliance with 804 CMR 1.13(4)(a) and no receipt of a timely opposition.

c. The moving party shall give prompt notice of the filing of the motion to all other parties by serving a notice of filing which should include a listing of the title of each paper filed and the date the motion packet is filed with the Commission. Motions, oppositions, replies, and sur-replies shall include attorney signatures in compliance with 804 CMR 1.15(9).

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5. Service. Motions, oppositions, replies, and sur-replies may be served electronically, by U.S. mail or *via* personal service. If a motion, opposition, reply, or sur-reply is served by U.S. Mail, any time period identified in 804 CMR 1.13(4) shall be increased by three days.

(c) Certificates of Service. The final page of every document served in accordance with 804 CMR 1.13(4) shall contain a certificate of service noting the date of service and the manner in which service was made on every party.

(d) Motion Conferences. In the event the Commission determines that a conference is necessary or shall aid in the disposition of a motion, the Commission may order the parties to appear to answer questions and present oral argument in support of their respective positions.

(e) Motions at Public Hearing. Motions made during the public hearing may be stated orally on the record.

(5) Appeal of Order Granting or Denying a Motion.

(a) Appeal to Full Commission. The Full Commission may entertain an interlocutory appeal of a Commission ruling occurring after certification and prior to public hearing if such appeal is related to the jurisdiction of the Commission or its authority to proceed on a matter. Prior to the issuance of a public hearing decision, an appeal to the Full Commission is not available for any other Commission rulings, except as provided in 804 CMR 1.15(5)(g). An order of the Full Commission issued in accordance with 804 CMR 1.13(5) is not a final order of the Commission and is not subject to judicial review pursuant to M.G.L. c. 151B, § 6 or M.G.L. c. 30A.

(b) Motion for Reconsideration of an Order Issued after Certification to Public Hearing. In the absence of new evidence proffered, motions for reconsideration of such orders shall be denied.

(6) Emergency Motions.

(a) Motions for emergency relief shall contain a cover page bearing the heading "Emergency Motion" in large, bold type.

(b) Motions for emergency relief shall set forth the facts showing the existence and nature of immediate and irreparable harm.

(c) The moving party shall serve a copy of the motion seeking emergency relief on all other parties and counsel, simultaneous with the filing at the Commission. Such motions are exempt from 804 CMR 1.13(4)(b).

(d) Emergency motions are exempt from 804 CMR 1.13(4)(a), although the Commission encourages all parties to confer in good faith prior to filing any such motion in order to narrow or obtain agreement upon the relief sought.

1.14: Subpoenas

(1) General Provisions. Subpoenas shall be issued in the name of the Commission and in accordance with M.G.L. c. 151B, § 3 and M.G.L. c. 30A, § 12, subject to the following provisions:

(a) Subpoenas may require the attendance and testimony of witnesses and the production, copying, and photographing of any evidence including, but not limited to, documents, other tangible things, or electronically stored information.

(b) A subpoena may be served by any person who is not a party and who is 18 years of age or older.

(c) Service of a subpoena upon a person named therein shall be made by personal service.

(d) When a subpoena is issued at the request of a party other than the Commission, the cost of the service as well as witness and mileage fees shall be those as in civil cases before the courts and shall be borne by the moving party. The Commission may waive such fees upon a showing of economic hardship.

(e) Upon a showing of economic hardship a party may move that a subpoena be issued by the Commission, which may be issued at the discretion of the Commission. Any such motion is exempt from 804 CMR 1.13(4)(a) and (b), although it shall be served on all counsel.

(f) Any party issuing a subpoena to a non-party shall give 14 days' notice to the Commission and all parties prior to service, and the subpoena may not be served pending any motion filed pursuant to 804 CMR 1.10(8) or 804 CMR 1.14(2).

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(g) A party may not serve subpoenas pre-probable cause unless authorized by the Commission.
(h) A party may serve subpoenas post-probable cause once a discovery order has been issued.
(i) Following certification to public hearing, a party may issue subpoenas compelling the attendance and testimony of witnesses and the production of documents and tangible things at public hearing.
(j) All subpoenas shall identify the name and address of the party at whose request the subpoena was issued.

(2) Vacation or Modification of Subpoenas. Any non party subject to subpoena, counsel for any party to the proceeding, *pro se* party, or counsel for the Commission may move to vacate or modify a subpoena in accordance with 804 CMR 1.13, except that non-parties are exempt from 804 CMR 1.13(4)(a) through (c). The Commission shall review the subpoena to determine whether it should be vacated or otherwise modified and issue an order.

(3) Enforcement of Subpoenas. Upon the failure of any person to comply with a subpoena issued pursuant to 804 CMR 1.14 and not subsequently vacated or modified by the Commission, the Commission may, either through one of its attorneys or through a private attorney so designated, apply to the Superior Court for an order requiring compliance with the subpoena pursuant to M.G.L. c. 30A, § 12(5) and M.G.L. c. 151B, § 6. The Commission may seek an order for costs and attorney's fees from the Superior Court when enforcing subpoenas pursuant to 804 CMR 1.14(3), as well as appropriate sanctions under M.G.L. c. 151B, § 8.

1.15: Parties and Representatives

(1) Duty to Provide Contact Information. Parties and representatives are required to provide the Commission with contact information in the form of a current mailing address, email address, and telephone number, and shall update such information when there is a change to any such information. Parties and representatives are required to provide and update contact information in the MCAD Case Portal. A party that is allowed alternative means of case access pursuant to 804 CMR 1.15(15) shall provide and update contact information with the Commission in writing.

(2) Intervention. Any person or organization not originally a party to a complaint may move to intervene in a complaint, and shall be permitted to intervene, if, in the judgment of the Commission, after certification to public hearing, that person or organization has a material interest in the outcome of the complaint, and asserts a claim or defense which has common questions of law or fact with the complaint.

(3) Substitution, Joinder, or Amendment of Parties. The Commission may sua sponte, or upon motion of any party, make such substitution, joinder, or amendment of parties as justice or convenience may require. All parties shall be notified of any substitution, joinder or amendment.

(4) Consolidation. The Commission may *sua sponte*, or upon motion of a party, order complaints involving a common question of law or fact to be consolidated.

(5) Class Action.
(a) The Commission may grant permission or *sua sponte* determine that a case shall proceed as an authorized class action at any time after a probable cause determination pursuant to 804 CMR 1.08(1)(f)1. and prior to certification to public hearing pursuant to 804 CMR 1.11 if the following prerequisites are met:
1. The class is so numerous that joinder of all members is impracticable;
2. There are questions of law or fact common to the class;
3. The claims or defenses of the representative parties are typical of the claims or defenses of the class;
4. The representative parties shall fairly and adequately protect the interests of the class;
5. The public interest is served by a class proceeding; and
6. The parties are allowed an opportunity to submit briefs on the issue prior to a *sua sponte* determination.

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(b) A class action shall be maintained if the prerequisites of 804 CMR 1.15(5) are met, and the Commission finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

(c) The Commission may require such review and impose such terms as shall fairly and adequately protect the interests of the class on whose behalf the complaint is brought or defended. Whenever the representative party appears to the Commission inadequate to fairly protect the interests of absent individuals who may be bound by any Commission order, the Commission may, at any time prior to entry of the order certifying the class, amend the complaint to eliminate any reference to representation of absent persons. The Commission shall enter an order in such form as to affect only the parties to the action and those adequately represented.

(d) Respondent(s) or any person whose rights may be affected by the resolution of an authorized class action may challenge the class nature of the complaint before or within ten days' notice of certification to public hearing pursuant to 804 CMR 1.11 through a motion submitted to the Commission for a hearing concerning the validity of the class. The respondent or person challenging the authorized class action shall have the burden of showing by a preponderance of the evidence that the proposed class fails to satisfy the requirements of 804 CMR 1.15(5).

(e) An authorized class action shall not be withdrawn or modified without the approval of the Commission.

(f) In any case brought as a class action, the Commission may, when appropriate, order that all remedies shall apply to member(s) of the class.

(g) A party may appeal an order by the Commission certifying a class action to the Full Commission.

(6) Counsel Required following Probable Cause. Following a probable cause determination pursuant to 804 CMR 1.08(1)(f)1. the case in support of the complaint shall be presented before the Commission by an attorney. Such attorney may either be a Commission attorney, or, at the discretion of the Commission, an attorney retained by the complainant. The determination whether to assign one of the Commission's attorneys to a pending matter shall be made at the discretion of the Commission in consideration of the public interest.

(7) Private Representation. A complainant may have a private attorney notwithstanding the assignment of one of the Commission's attorneys to a case, although in such case counsel for the Commission has exclusive authority to present the case in support of the complaint and represent the public interest.

(8) Attorney Withdrawal.

(a) Prior to a conciliation conference held pursuant to 804 CMR 1.09, an attorney may, without leave of the Commission, withdraw from a matter by filing a written notice of withdrawal together with proof of service on their client and all other parties.

(b) Following the conciliation conference held pursuant to 804 CMR 1.09, an attorney may, without leave of the Commission, withdraw from a matter by filing a written notice of withdrawal which includes an appearance of successor counsel. Absent an appearance of successor counsel, an attorney shall obtain leave of the Commission to withdraw from a case. In deciding whether to allow the withdrawal of an attorney, the Commission's considerations may include, but are not limited to, the public interest necessary to assign one of the Commission's attorneys and the impact of a withdrawal on the timely, fair and efficient adjudication of the case.

(c) Unless there is appearance by successor counsel, every notice of withdrawal or request to withdraw filed under 804 CMR 1.15(8)(a) or (b) shall include current contact information for the party for whom representation is being withdrawn, including home and business address, email address and telephone number(s).

(d) Leave to withdraw without successor counsel shall be conditioned upon counsel's cooperation in the transfer of the matter to the Commission including, but not limited to, providing the Commission with all discovery conducted prior to withdrawal.

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(9) Attorney Signature.

(a) Every pleading, motion or document filed by a party represented by counsel shall be signed by counsel. The address of each attorney, telephone number, business email address, and bar registration number shall be stated.

(b) The signature of an attorney constitutes certification that the signer has read the pleading, motion, or document; that based on the signer's knowledge, information, and belief, it is grounded in fact and warranted by existing law or constitutes a good faith argument for the extension, modification, or revision of existing law; and is not interposed for any improper purpose, such as to harass or cause unnecessary delay or increase in the cost of the proceedings.

(c) Any pleading, motion, or document filed by counsel that is unsigned shall be stricken, unless it is signed promptly after the omission is brought to the attention of the attorney who filed the document.

(d) If a pleading, motion, or other document submitted to the Commission fails to comply with the requirements within 804 CMR 1.15(9), the Commission may impose sanctions in accordance with 804 CMR 1.22 upon the attorney, the represented party, or both, including an order to pay reasonable expenses and attorney's fees incurred by the opposing party or the Commission as a result of the noncompliant document.

(10) Enforcement by Private Counsel. The Commission may grant a request by complainant's counsel to be the designated agent of the Commission for purposes of enforcement of a settlement agreement, consent order, subpoena or final order of the Commission provided that the interest of the complainant and the interest of the Commission are not in conflict. Designation of private counsel as agent of the Commission for purposes of enforcement shall be made in writing.

(11) Attorney Notice of Appearance and *Pro Hac Vice* Notice. Any attorney representing a client in a complaint filed with the Commission shall be a member in good standing of the bar of the Commonwealth of Massachusetts and shall file a notice of appearance. The filing of a complaint on behalf of a client pursuant to 804 CMR 1.04(1) shall constitute a notice of appearance. If an attorney is not a member of the Massachusetts bar, in order to be admitted to represent a client *pro hac vice*, a motion for admission shall be filed in conformance with the following:

(a) The motion shall be signed and filed by a member in good standing of the Massachusetts bar on behalf of the attorney seeking admission *pro hac vice*.

(b) The motion shall be accompanied by an affidavit from the attorney signing the motion stating that the out of state attorney is a member of the bar in good standing in every jurisdiction where admitted to practice; there are no disciplinary proceedings pending; and the attorney is familiar with the Commission's regulations and the Massachusetts anti-discrimination laws.

(12) Limited Exception to Attorney *Pro Hac Vice* Admission. Pre-probable cause and during any appeal filed pursuant to 804 CMR 1.08(4)(b), an attorney who is a member in good standing of a state bar outside of Massachusetts may represent a party before the Commission without being admitted *pro hac vice*. After the issuance of a probable cause determination under 804 CMR 1.08(1)(f)1., an attorney who is not a member of the Massachusetts bar in good standing or admitted *pro hac vice* may not represent a party before the Commission.

(13) Appearance by a Duly Authorized Representative. Except for when a sanction issues pursuant to 804 CMR 1.22(2)(d), a party shall have exclusive control over whether a duly authorized representative appears on their behalf and a party may authorize or revoke such representation at any time. Any authorization or revocation shall be filed in writing by the party with the Commission. A duly authorized representative is not allowed to file a complaint through the MCAD Case Portal on behalf of a complainant but may assist a complainant in the drafting and preparation of a complaint through the MCAD Case Portal. After such complaint is filed, the complainant may formally authorize the duly authorized representative to act on their behalf.

(14) Scope of Duly Authorized Representation. In accordance with the prohibition against the practice of law by non-attorneys, duly authorized representatives are not allowed for any party after the issuance of a probable cause disposition.

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(15) Use of the MCAD Case Portal after the Filing of the Complaint. *Pro se* parties and representatives are required to use the MCAD Case Portal for all filings, case access, and communication with the Commission after the filing of the complaint. *Pro se* parties may be excused from using the MCAD Case Portal if they demonstrate a compelling inability to access or use the MCAD Case Portal or have received reasonable accommodation due to a disability. Representatives may be excused from using the MCAD Case Portal if they have received reasonable accommodation due to a disability.

1.16: Service and Notice

(1) Service by the Commission.

(a) Manner of Service. The Commission may serve any document, including the complaint, in a manner reasonably calculated to ensure receipt including, but not limited to, service through the MCAD Case Portal, by U.S. Mail, personal service, or service *via* email.

(b) Service of the Complaint upon Respondent. Notice of the complaint shall be deemed sufficient and a respondent shall be deemed properly served with the complaint when:

1. A complaint is served on a respondent who is a registered user of the MCAD Case Portal through the MCAD Case Portal;
2. A respondent registers as a user in the MCAD Case Portal in response to the complaint after service by any means;
3. An attorney for a respondent enters an appearance through the MCAD Case Portal in response to the complaint after service by any means;
4. A certified mail receipt is returned from a legal entity or their agent authorized to accept service; or
5. Service is *via* personal service.

(2) Sufficient Notice after Service of the Complaint. After service of the complaint, all registered users of the MCAD Case Portal shall be notified of case documents and proceedings through system notifications sent to their registered email addresses, in accordance with the parties' obligation to keep contact information up to date and accurate pursuant to 804 CMR 1.15(1). System notifications shall constitute sufficient notice of the content communicated within the notifications or attached thereto. If a party does not register or participate as a user in the MCAD Case Portal after proper service of the complaint, either because they are authorized to use alternative means of filing and case access pursuant to 804 CMR 1.15(15) or because of a failure to participate in the investigation or adjudication of a complaint after service, the party shall be deemed on notice of every document served by the Commission or the parties to the party's last known address.

(3) Service by the Parties.

(a) Service through the MCAD Case Portal. Filing a document through the MCAD Case Portal is deemed served on all parties and representatives who are registered users of the MCAD Case Portal. No certificate of service is required for such filings.

(b) Service Other than through the MCAD Case Portal. Where service is made by any means other than through the MCAD Case Portal, the serving party shall include a certificate of service with the document. The certificate shall state the date and manner of service and the parties served. Service outside the MCAD Case Portal includes but is not limited to the following:

1. Post-probable Cause Motion Practice. Where motions, oppositions, replies, or sur-replies must be served on opposing parties prior to filing the motion package under 804 CMR 1.13(4), service shall be made in accordance with that section.
2. Discovery. Discovery documents shall not be served through the MCAD Case Portal, except for notices of non-party subpoenas filed pursuant to 804 CMR 1.14(1)(f). All discovery documents served shall include a certificate of service.

(c) Alternative Means of Filing, Case Access, and Communication with the Commission. Where the Commission authorizes a party to use alternative means for filing, case access, or communication with the Commission pursuant to 804 CMR 1.15(15), service on that party shall comply with the Commission's order and all such service shall include a certificate of service on every document.

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1.17: Computing and Extending Time

(1) Computation.

(a) In computing any period of time prescribed or allowed by 804 CMR 1.00 or by order of the Commission, the day of the act or event, including default, after which the designated period of time begins to run shall not be included.

(b) The last day of the period being computed shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs to the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

(c) When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

(d) A legal holiday for the purposes of 804 CMR 1.17(1)(b) includes those days specified by M.G.L. c. 4, § 7 and any other day appointed as a holiday by the President or the Congress of the United States, or designated by the Laws of Massachusetts.

(2) Extensions.

(a) Pre-probable Cause. During any stage of the investigation, upon written request and for good cause shown, any party may request an extension of time. The request shall be addressed to the Commission and state the extension of time being requested and the reason(s) for the extension.

(b) Post-probable Cause. After an investigative disposition has issued, any request for an extension shall be made to the Clerk's Office and shall be subject to motion practice and other requirements within 804 CMR 1.13.

1.18: Proceedings on Commission Initiated Complaints

(1) General Provisions.

(a) All complaints initiated by the Commission pursuant to M.G.L. c. 151B, § 5 and 804 CMR 1.04(1)(e) shall be processed under 804 CMR 1.18, unless otherwise ordered by the Commission.

(b) Such matters shall be investigated, heard and determined by the Commission as expeditiously as possible.

(c) Upon a Commission initiated complaint, the procedures of 804 CMR 1.00 shall be suspended, with the exception of proceedings pursuant to 804 CMR 1.23, 1.24 and 1.25.

(d) The Commission may make the complaint and the terms of any settlement agreement publicly available at any time.

(2) Service and Investigation.

(a) The Commission shall serve a Commission initiated complaint on each of the respondents *via* personal service. Such service shall include a notice requiring each respondent to file a position statement as described in 804 CMR 1.05(8) within 21 days of service.

(b) The Commission may serve subpoenas via personal service as it deems necessary to investigate the matter.

(c) The Commission shall, within 45 calendar days of service of the Commission initiated complaint, convene an investigative conference, as described in 804 CMR 1.05(10), except that the Commission may provide less than 14 days' notice of the conference. Notice of the date, time, and place of the conference shall be served upon the respondents. The investigative conference shall result in one of the following outcomes:

1. The Commission may determine that a lack of probable cause exists for crediting the allegations of the complaint, and shall notify the parties of such determination. Such determination shall be the final order of the Commission, and is not subject to preliminary appeal pursuant to 804 CMR 1.08(4)(b) or Full Commission or judicial review pursuant to M.G.L. c. 151B, § 6 or M.G.L. c. 30A.

2. The Commission may determine that probable cause exists for crediting the allegations of the complaint, in which case the Commission shall immediately endeavor to eliminate the unlawful practice complained of by conference, conciliation and persuasion.

If the Commission finds probable cause to credit the allegations of any housing complaint, the Commission shall immediately serve notice upon the respondent of the right to elect judicial determination of the complaint pursuant to M.G.L. c. 151B, § 5.

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1.18: continued

(3) Certification to Public Hearing.

(a) The Commission may certify the claims for public hearing if the matter is not settled through conciliation. In any matter certified for public hearing the Commission may seek all remedies available pursuant to M.G.L. c. 151B.

(b) The Commission shall serve a written notice requiring respondent to answer the certified claims at a public hearing before the Commission, at a time and place to be specified in the notice. Requests to continue shall be granted only upon a showing of good cause.

(4) Public Hearing.

(a) The public hearing should, if at all practicable, occur within 60 days of the investigative conference described in 804 CMR 1.18(2)(c).

(b) The case in support of the certified claims shall be presented before the Commission by counsel for the Commission.

(c) The respondent shall appear at the public hearing in person, with or without an attorney, and may submit evidence to rebut the certified claims.

(5) Public Hearing Decision. The Commission should, if at all practicable, issue a final order and decision within 60 days from the conclusion of a public hearing pursuant to 804 CMR 1.18(4).

1.19: Emergency Proceedings

General Provisions.

(1) The Commission may upon motion demonstrating necessity, or sua sponte, order that any matter under its jurisdiction be processed as an emergency proceeding. The Commission may seek all remedies available pursuant to M.G.L. c. 151B.

(2) Such matters shall be investigated, heard and determined by the Commission as expeditiously as possible.

(3) Upon an order that a matter be set for emergency proceedings, the procedures of 804 CMR 1.00 shall be suspended, with the exception of 804 CMR 1.23, 1.24 and 1.25.

1.20: Language Assistance Services

(1) Basis for Services. Parties who require language assistance services to ensure meaningful access to, participation in and understanding of Commission proceedings, programs or services, shall be provided such services.

(2) Request Required. Language and interpreter assistance services may be provided if the individual in need or his or her representative makes a written or verbal request for such services in advance of the proceeding, or if the Commission determines there is a need for said services. The Commission retains discretion to determine when such services are needed.

(3) Type of Services. The services to be provided, whether telephonic interpretation, professional interpretation services, or interpretation by a competent bilingual staff member or other bilingual individual, or other language assistance service, shall be determined by the Commission.

(4) Adequate Notice Required. Parties requiring language assistance services shall make every effort to give adequate notice to the Commission of the need for such services. If the Commission determines that such services are required and inadequate notice has been provided to secure such services, a proceeding may be continued until such time as the services may be secured.

(5) Request for a Specific Interpreter. Whether to allow a party's request for interpretation services from a particular individual is entirely within the discretion of the Commission.

1.21: Access to Commission Materials and Restrictions to Personal Data

(1) Case Information Available to the Public. The following requirements apply to a request for case information by the public, all subject to 804 CMR 1.21(3):

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1.21: continued

(a) Pre-probable Cause. The investigative file in every charge under investigation, including the complaint, shall be confidential and exempt from public disclosure.

(b) After Investigative Disposition. The investigative file in every charge after an investigative disposition issues shall be confidential and exempt from public disclosure except for the complaint and the investigative disposition. The post-probable cause record of all docketed proceedings, filings, orders, and notices begins at the issuance of a probable cause determination and does not include the investigative file except for the complaint, shall be available upon case dismissal or the issuance of a public hearing decision, whichever is first. In the event of an appeal pursuant to 804 CMR 1.23, the record of the appeal shall be available upon case dismissal or the issuance of a final decision by the Full Commission, whichever is first.

(2) Additional Case Information Available to the Parties. After the issuance of an investigative disposition, the investigative file shall be available to the parties except that all records described in 804 CMR 1.21(3) shall be unavailable.

(3) Unavailable Information. Privileged information, attorney work product, information exempt from disclosure pursuant to the public records law or other laws, information withheld or redacted pursuant to 804 CMR 1.21(4), and information placed under a pseudonym or protective order by the Commission pursuant to 804 CMR 1.04(7), 1.05(12) or 1.12(9) is not available to the public or to the parties.

(4) Restrictions on Personal Data Identifiers in Filings. To protect personal privacy, parties and representatives shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all filings and exhibits submitted to the Commission, whether filed electronically or on paper, unless otherwise ordered by the Commission:

(a) Social Security, Taxpayer Identification, Driver's License, State-issued Identification Card, or Passport Numbers. If any such individual numbers shall be included in a filing, only the last four digits of that number should be used.

(b) Names of Minor Children. If the involvement of a minor child shall be included in a filing, they shall be referred to only as "minor child," although multiple minor children shall be distinguished from one another numerically, *i.e.*, "minor child 2."

(c) Dates of Birth. If an individual's date of birth shall be included in a filing, only the year should be used.

(d) Financial Account, Credit or Debit Card Numbers. If any such financial account numbers shall be included in a filing, only the last four digits of these numbers should be used.

(e) Medical Record Numbers or Patient Identification Numbers. If any such medical record numbers shall be included in a filing, only the last four digits of these numbers should be used.

(f) Mother's Maiden Name. If a person's mother's maiden name is identified as such, only the first initial of the maiden name shall be used.

(5) Responsibility for Redaction and Availability of Original. The responsibility for redacting personal data identifiers rests solely with parties and representatives. The Commission shall not review each filing for compliance with 804 CMR 1.21(4). Parties and representatives shall keep a complete copy of any document redacted containing the complete personal data identifier and shall furnish it to the Commission promptly upon request by the Commission to produce an un redacted version of the document.

1.22: Sanctions

(1) Grounds for Sanctions. Parties, representatives and others accessing Commission services and offices may be subject to sanctions as provided throughout 804 CMR 1.00 and on the following grounds:

(a) Failure to comply with any provisions in 804 CMR 1.00 as applicable, or any directive or order by the Commission;

(b) Abusive, disruptive, or harassing behavior towards other parties, representatives, Commissioners, or Commission staff;

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1.22: continued

(c) The filing of three or more complaints subject to dismissal pursuant to 804 CMR 1.05(2)(b)(1) through (8) or administrative dismissal *via* sanctioning authority in 804 CMR 1.22 in a one-year period; or

(d) The intentional filing of documents containing false information, including false information generated by artificial intelligence.

(2) Sanction Types. Sanctions may include but are not limited to:

(a) The award of attorney's fees and costs to other parties or the Commission;
(b) Administrative dismissal of the complaint;
(c) Limitations to or denial of access to Commission offices;
(d) Removal of duly authorized representation authorization;
(e) Denial of access to the MCAD Case Portal;
(f) Written reprimands;
(g) Limitations on communications with Commission staff; or
(h) Investigative default against a respondent pursuant to 804 CMR 1.07.

(3) Sanction Orders Required. An order is required to impose any sanction in 804 CMR 1.22 which shall address the grounds and the timeframe for the sanction imposed.

1.23: Full Commission Review

(1) Review of Public Hearing Decision.

(a) Time Period for Request. Any party aggrieved by a final public hearing decision may, within ten days of receipt of the decision, file a notice of appeal with the Clerk's Office.

(b) Petition for Review. Within 30 days of receipt of the decision, the appellant shall file with the Commission a petition for review with the Clerk's Office setting forth:

1. A statement of the claims presented for review;
2. A succinct statement of facts relevant to the issue(s) presented for review with appropriate citation references to the record upon which the appellant relies to support the appeal;
3. Any findings of fact which the appellant claims are not supported by substantial evidence and unwarranted by the facts in the record;
4. Any alleged error of law, including citations to the authorities, statutes and parts of the record relied on;
5. All other matters on which the appellant relies to support the appeal; and
6. The relief to which the appellant claims they are entitled, which relief may be requested in the alternative.

(c) Service. The party filing a notice of appeal or petition for review of a public hearing decision shall serve a copy of the notice and petition upon all parties to the proceeding.

(2) Intervention in the Review.

(a) Any party to the public hearing shall have the right to intervene in the review proceeding by filing a notice of intervention stating the party's interest and the position taken with respect to the decision under appeal.

(b) The Full Commission may in its discretion permit other interested persons to intervene in the review proceeding, if such persons are substantially and specifically affected by the proceedings.

(c) The notice of intervention shall be filed within ten days of receipt of the petition for review and shall be served on all parties by the intervener.

(d) An intervener may file a brief in reply to the petition for review addressing the appellant's arguments within 30 days of receipt of the petition for review, which shall be served on all parties by the intervener.

(3) Form of Petition for Review and Intervener's Brief. Except by permission of the Full Commission, a petition for review and any intervener's brief shall not exceed 30 pages, shall be filed on 8 ½" by 11" paper, when not filed electronically, be typed in no less than 12-point type, and be double spaced, provided that the case caption, footnotes, and quotations may be single spaced. The margins shall be at least one inch.

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(4) Citation of Supplemental Authorities. When pertinent and significant authorities come to the attention of a party after the petition for review or intervener's brief has been filed, a party shall promptly advise the Full Commission, by letter, with a copy to all parties, setting forth the citations.

(5) Stay of Order. The filing of a petition for review of a public hearing decision shall operate as a stay of execution of the public hearing decision, unless ordered otherwise by the Full Commission.

(6) Full Commission Members. The Commissioners who have been assigned to a matter post-probable cause up to certification shall not participate in the deliberations of the Full Commission except when necessary to create a quorum of the Full Commission or to resolve a split decision.

(7) Oral Argument. The Commission may, in its discretion, order oral argument on a petition for review.

(8) Record of Review. The petition for review shall be confined to the record presented at the public hearing.

(9) Additional Evidence. If application is made to the Full Commission for leave to present additional evidence, and it is shown to the satisfaction of the Full Commission that the additional evidence is material to the claims in the case, and that there was good reason for failure to present it at public hearing, the Full Commission may order that the additional evidence be taken after remand upon such conditions as the Full Commission deems proper.

(10) Full Commission Decision. After review of the decision of the Hearing Commissioner, the Full Commission may affirm the decision, or remand the matter for further proceedings before the Hearing Commissioner; or set aside or modify the decision, if it determines that the substantial rights of any party may have been prejudiced because the decision is:

(a) In violation of constitutional provisions;
(b) In excess of the statutory authority or jurisdiction of the Commission;
(c) Based on an error of law;
(d) Made on unlawful procedure;
(e) Unsupported by substantial evidence; or
(f) Arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law or the order certifying the claims to public hearing.

(11) Commission Initiated Review of Public Hearing Decisions. The Full Commission may review the final public hearing decision *sua sponte*. In addition, a Commissioner who presided over the matter post-probable cause, may request the Full Commission to review a public hearing decision. In such event, the Full Commission may order oral argument, or order the parties to submit memoranda of law or fact.

(12) Request for Award of Attorney's Fees and Costs after Issuance of Full Commission Decision. Where the complainant prevails in an appeal to the Full Commission, the complainant may, within 15 days of receipt of the Full Commission decision issued pursuant to 804 CMR 1.23(10) or (11), petition for an award of reasonable attorney's fees and costs subject to the following provisions:

(a) The petition shall include detailed, contemporaneous time records, a breakdown of costs, and a supporting affidavit from every attorney for whom the fees are sought. The petition shall also include information about fair market hourly rates of attorneys with similar skill and experience performing similar work, which may be in the form of affidavits from attorneys with knowledge of such hourly rates or model fee charts, or other documentation;
(b) If complainant is the appellant, the petition may contain a request for fees and costs incurred prior to the appeal as well as those incurred as a result of litigating the appeal;
(c) If complainant is the appellee, the petition may contain only a request for supplemental fees and costs incurred as a result of litigating the appeal, as the costs incurred in prior proceedings before the Full Commission shall have been requested in accordance with 804 CMR 1.12(19);

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(d) A respondent may file an opposition within 15 days of receipt of said petition; and
(e) The decision by the Full Commission on the petition for the award of attorney's fees and costs, together with the Full Commission decision issued pursuant to 804 CMR 1.23(10) or (11) shall constitute the final order of the Commission for the purpose of judicial review pursuant to M.G.L. c. 151B, § 6 and M.G.L. c. 30A.

1.24: Judicial Review

(1) Final Commission Order. For the purpose of judicial review pursuant to M.G.L. c. 151B, § 6 and M.G.L. c. 30A, only the decision of the Full Commission pursuant to 804 CMR 1.23(10), (11) or (12) shall constitute the final order of the Commission.

(2) Who May Obtain Judicial Review of a Final Commission Order. Judicial review of a final Commission order may be obtained by the complainant, respondent or other person aggrieved by such order pursuant to M.G.L. c. 151B, § 6.

1.25: Judicial Enforcement

(1) Final Commission Order. Where no party files a timely appeal to the Full Commission, the public hearing decision shall constitute the final order of the Commission for the purposes of judicial enforcement. If an appeal to the Full Commission is timely filed, or the public hearing decision is reviewed *sua sponte*, the Full Commission decision shall constitute the final order of the Commission for purposes of judicial enforcement. Consent orders entered into by the Commission may constitute final orders of the Commission for the purposes of judicial enforcement.

(2) Who May Obtain Judicial Enforcement of a Final Commission Order. A party to a consent order or a person affected by a final order of the Commission may request that the Commission initiate an action for enforcement. The Commission may obtain enforcement by filing a petition in the appropriate state court pursuant to M.G.L. c. 151B, § 6. The Commission may appear in court at enforcement proceedings through one of its attorneys, or it may designate an attorney for the party aggrieved by the alleged violation of the consent order or final order of the Commission as agent of the Commission for the purpose of obtaining enforcement, in writing. An attorney so designated is not authorized to negotiate settlement terms addressing relief in the public interest ordered in a final Commission order, including civil penalties issued pursuant to M.G.L. c. 151B, § 5 or affirmative relief.

(3) Method of Enforcement. The Commission may seek to enforce the provisions of M.G.L. c. 151B, M..G.L. c. 151C, or M.G.L. c. 272, §§ 92A, 98, or 98A, or any other statutes under the jurisdiction of the Commission, or 804 CMR 1.00 by utilization of the procedures set forth in M.G.L. c. 151B, §§ 5, 8, M.G.L. c. 214, § 3(12) or (13) or any other lawful means as the interests of justice demand.

REGULATORY AUTHORITY

804 CMR 1.00: M.G.L. c. 151B, § 3; M.G.L. c. 151C, § 5.

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