# Massachusetts Commission Against Discrimination
# Meeting Minutes

**Date/Time:** Wednesday, May 27, 2026, at 5:00 p.m.
**Place:** MCAD – 1 Ashburton Place, Suite 601, Boston, MA 02108
**Format:** Hybrid Meeting with YouTube Livestream for Public Observation
**Livestream:** https://www.youtube.com/channel/UCh_wjAthLJTQf-KMgMGv1Yw

The Massachusetts Commission Against Discrimination held a public meeting on Wednesday, May 27, 2026. Commissioners and staff participated in person and remotely, and the meeting was livestreamed for public observation.

**Commissioners Participating In-Person:**
Chair Sunila Thomas George
Commissioner Jeremy Scheiner

**Commissioners Participating Remotely:**
Commissioner Christina Brown
Commissioner Edward Mitnick
Commissioner Steven Locke

**Staff Present:**
Michael Memmolo, Executive Director
Deirdre Ann Hosler, General Counsel
Diane Nordbye, Deputy General Counsel
Lila L. Roberts, Esq., Chief of Investigations
Andrew Espinosa, Deputy Chief of Investigations
Ruthy Barros, Recording Secretary – Participated Remotely

1. **Call to Order**
   Chair Sunila Thomas George called the meeting to order at 5:02 p.m. The Chair stated that notice of the meeting and the agenda had been properly filed with the Secretary of the Commonwealth and posted on the Commission's website in accordance with the Massachusetts Open Meeting Law. The Chair conducted a roll call. Commissioner Brown, Commissioner Locke, Commissioner Mitnick, Commissioner Scheiner, and Chair Thomas George were present. The Chair announced that a quorum was present.

   Roll Call Attendance:

| | |
|---|---|
| *Chair Thomas George* | *Present.* |
| *Commissioner Brown* | *Present.* |
| *Commissioner Locke* | *Present.* |

| | |
|---|---|
| *Commissioner Mitnick* | *Present.* |
| *Commissioner Scheiner* | *Present.* |

2. **Approval of the May 12, 2026 Commission Meeting Minutes**
The Chair introduced the draft minutes of the May 12, 2026 Commission meeting. A motion to approve was made by Commissioner Edward Mitnick and seconded by Commissioner Jeremy Scheiner. By unanimous voice vote, the Commission approved the May 12, 2026 meeting minutes, 5-0.

Roll Call Vote:

| | |
|---|---|
| *Chair Thomas George* | *Aye.* |
| *Commissioner Brown* | *Aye.* |
| *Commissioner Locke* | *Aye.* |
| *Commissioner Mitnick* | *Aye.* |
| *Commissioner Scheiner* | *Aye.* |

3. **Discussion and Review of Proposed Revisions to 804 CMR 1.00**
The Commission resumed its review of proposed revisions to the MCAD Rules of Procedure and the public comments received on the draft. The discussion began with 804 CMR 1.15 and continued through 804 CMR 1.16.

In reviewing 804 CMR 1.15, the Commission agreed that the intervention provision should use the term "post-probable cause" consistently. The Commission also agreed that the limited exception to pro hac vice admission is triggered after the issuance of a probable cause determination, rather than after any determination, and that the related cross-reference should be to 804 CMR 1.08(1)(f)(1).

The discussion then turned to duly authorized representatives. The Commission agreed to clarify that a party controls whether a duly authorized representative appears on the party's behalf and may authorize or revoke that representation at any time, provided that the authorization or revocation is filed in writing with the Commission. A duly authorized representative may assist a complainant in drafting and preparing a complaint but may not file the complaint on the complainant's behalf. Formal authorization of the representative may occur after the complaint is filed. The Commission further agreed to state expressly that a duly authorized representative may not represent a party after the issuance of a probable cause determination and to use the term "determination" instead of "disposition" for consistency.

The Commission next discussed use of the MCAD Case Portal. Pro se parties, duly authorized representatives, and attorneys will be required to use the portal for filings made after the complaint, case access, and communications with the Commission. A pro se party may be excused from using the portal upon demonstrating a compelling inability to access or use it or upon receiving a reasonable accommodation due to disability. Representatives may be excused when granted a reasonable accommodation due to disability. The Commission declined to extend the separate compelling-inability exception to attorneys or duly authorized representatives.

Turning to 804 CMR 1.16, the Commission agreed that the provisions governing service of a complaint should refer specifically to service upon a respondent, rather than more generally to service upon a party, because the provision establishes when a respondent may be deemed properly served and on notice of the complaint. Service through the MCAD Case Portal will be sufficient when the complaint is delivered to a respondent who is already a registered portal user, without requiring any additional response from the respondent. Service will also be sufficient when, after service by another authorized means, the respondent registers for the portal or the respondent's representative enters an appearance in the case. Personal service will remain available when other methods do not establish receipt.

The Commission discussed the need to establish reliable service and fair notice when a respondent is not registered for the portal or when an email address may be incorrect, inactive, or filtered. The discussion addressed follow-up measures such as verifying addresses, contacting an unresponsive respondent, using certified mail, and proceeding to personal service when necessary. The Commission agreed in concept to add certified mail as a method of establishing service on a legal entity when the complaint is sent to the entity's registered address, principal place of business, or registered agent and proof of receipt is available. The Office of General Counsel will refine the wording. It was also noted that preliminary investigation procedures are being developed to strengthen the review of service before a matter advances to formal investigation.

The Commission agreed to retain the sufficient-notice provision as a clear regulatory basis for communications sent to registered portal users after service of the complaint. The provision will apply to both complainants and respondents, and system notifications will constitute sufficient notice of the information contained in the notification and any attached documents. The Commission agreed to delete the sentence stating that accessing the portal establishes notice of everything available at the time of access because the language could create an unintended limitation. The language addressing authorized alternatives to the portal will use the phrase "alternative means of filing, case access, and communication with the Commission."

The Commission also agreed to reorganize 804 CMR 1.16 so that service by the Commission is followed by sufficient notice after service of the complaint and then service by the parties. Documents filed through the portal may be served through the portal without separate service or a certificate of service. Documents exchanged outside the portal, including discovery materials and post-probable-cause filings served directly between the parties, will remain subject to the applicable service and certificate-of-service requirements. Once motion briefing is complete, the moving party will assemble and file the complete motion packet through the MCAD Case Portal.

At approximately 6:10 p.m., the Commission took a brief recess to address technical issues with the hybrid meeting display and livestream. The meeting reconvened at approximately 6:15 p.m.

The Commission then addressed several additional revisions. Under 804 CMR 1.12(10), a party requesting a copy of a public hearing recording may be required to pay the associated

cost when delivery requires physical media or another method that creates an expense. An electronic upload would not ordinarily require a charge. The Commission also agreed to standardize the formatting requirements in 804 CMR 1.12(16), 1.13, and 1.23(3) by requiring type of at least 12 points, double spacing, and one-inch margins, while permitting captions, footnotes, and quotations to be single-spaced. In addition, 804 CMR 1.13(4)(c)(4) will clarify that the complete motion packet, including any opposition, reply, and surreply, must be filed with the Commission through the MCAD Case Portal.

The Commission concluded its discussion by considering the remaining review of 804 CMR 1.17 through 1.25 and whether a final vote could occur at the May 29 meeting. The discussion emphasized the importance of having a consolidated version reflecting all agreed revisions before voting on the regulations as a whole. The Office of General Counsel will incorporate the May 27 revisions and circulate an updated redline and a clean reading copy on the morning of May 28. Future redlines will use a single color so that the substantive changes are easier to review.

The Commission will attempt to complete its review of the remaining sections at the May 29 meeting and, if all Commissioners are satisfied with the final language, vote on the regulations as a whole. If the draft is not ready for final approval, the Commission will not file it and will schedule additional review as needed.

4. **Next Meeting Date**
   The next Commission meeting was confirmed for Friday, May 29, 2026, from 10:00 a.m. to 12:00 p.m. The Commission will resume its review of the proposed revisions beginning with 804 CMR 1.17.

5. **Other Business**
   The Chair asked whether there was any other business. No additional business was raised.

6. **Adjournment**
   The Chair asked whether there was any objection to adjournment. Hearing none, the meeting adjourned shortly after 7:00 p.m.

**Meeting Materials**

- MCAD Public Meeting Notice and Agenda for May 27, 2026.
- Draft minutes of the May 12, 2026 Commission meeting.
- Final Draft Procedural Regulations for Commissioners Meeting to be reviewed May 27, 2026, including the working redline of proposed revisions to 804 CMR 1.00, MCAD Rules of Procedure.
- Public comments and Office of General Counsel recommendations referenced during the Commission's review.

Prepared by: Ruthy Barros, Recording Secretary

# NOTICE OF MEETING AND AGENDA

Pursuant to the Massachusetts Open Meeting Law, M.G.L. c. 30A, §§ 18-25, and the extended temporary provisions pertaining to the Open Meeting Law (most recently extended on March 28, 2025), notice is hereby given of a meeting of the Massachusetts Commission Against Discrimination. The meeting will take place:

**Wednesday | May 27, 2026 | 5:00 PM**
**Hybrid Meeting with YouTube Livestream**
https://www.youtube.com/channel/UCh_wjAthLJTQf-KMgMGv1Yw

Please note that the Commission will conduct this public meeting in a hybrid format. The meeting will also be accessible to the public by livestream as an adequate alternative means of public access to the Commission's deliberations. If a technical issue affects the livestream, updated access information will be posted promptly at www.mass.gov/mcad.

All documents and presentations related to this agenda will be available for review on the MCAD website.

1. Call to Order

2. Approval of the May 12, 2026 Commission Meeting Minutes – VOTE

3. Discussion and Review of Proposed Revisions to and Public Comments Received on MCAD Draft Rules of Procedure, 804 CMR 1.00

4. Next Meeting Date – Friday, May 29, 2026, from 10:00 AM to 12:00 PM

5. Other Business – Reserved for matters the Chair did not reasonably anticipate at the time of posting.

6. Adjournment

I certify that on this date, this Notice was posted as "MCAD Public Meeting Notice and Agenda (May 27, 2026)" at www.mass.gov/mcad and emailed to regs@sec.state.ma.us. Posted to website: May 21, 2026 at 12:00 PM.

Sunila T. G.

Chairwoman, Sunila Thomas George

*This meeting is open to all interested individuals. If there are any questions pertaining to accessibility and/or further assistance is needed, please email* ruthy.barros2@mass.gov.

# Massachusetts Commission Against Discrimination
# Meeting Minutes

**Date/Time:** Tuesday, May 12, 2026, at 10:00 AM
**Place:** Massachusetts Commission Against Discrimination
1 Ashburton Place, Suite 601, Boston, MA 02108
**Format:** In-Person Meeting with YouTube Livestream for Public Observation
**Livestream:** https://www.youtube.com/channel/UCh_wjAthLJTQf-KMgMGv1Yw

The Massachusetts Commission Against Discrimination held a public meeting on Tuesday, May 12, 2026, in person, with commissioners and staff participating at the meeting location. The meeting was livestreamed for public observation.

**Commissioners Present:**
Chair Sunila Thomas George
Commissioner Christina Brown
Commissioner Jeremy Scheiner
Commissioner Edward Mitnick
Commissioner Steven Locke

**Staff Present:**
Michael Memmolo, Executive Director
Deirdre Ann Hosler, General Counsel
Diane Nordbye, Deputy General Counsel
Lila L. Roberts, Esq., Chief of Investigations
Andrew Espinosa, Deputy Chief of Investigations
Ruthy Barros, Recording Secretary

## 1. Call to Order

Chair Sunila Thomas George called the meeting to order at 10:08 AM. The Chair stated that notice of the meeting and agenda had been properly filed with the Secretary of the Commonwealth and posted on the Commission's website in accordance with the Massachusetts Open Meeting Law.

The Chair conducted a roll call. Commissioner Brown, Commissioner Locke, Commissioner Mitnick, Commissioner Scheiner, and Chair Thomas George were present. The Chair announced that a quorum was present.

Roll Call Attendance:

| | |
|---|---|
| *Chair Thomas George* | *Present.* |
| *Commissioner Brown* | *Present.* |
| *Commissioner Locke* | *Present.* |

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*Commissioner Mitnick* *Present.*
*Commissioner Scheiner* *Present.*

**2. Approval of the April 3, 2026 and April 6, 2026 Commission Meeting Minutes**
The Chair introduced the draft minutes from the April 3, 2026 and April 6, 2026 Commission meetings. Hearing no discussion, the Commission voted unanimously to approve the minutes by a vote of 5-0.

Roll Call Vote:
*Chair Thomas George* *Aye.*
*Commissioner Brown* *Aye.*
*Commissioner Locke* *Aye.*
*Commissioner Mitnick* *Aye.*
*Commissioner Scheiner* *Aye.*

**3. Executive Director and Commissioner Announcements**
Executive Director Memmolo announced that the Commission is working to finalize the transition date for the Fall River office. He stated that a grand opening is planned for Friday, May 22, with the time to be determined.

Commissioner Brown noted that Justine LaVoye, Communications Director, had shared that the City of Boston recently recognized the inaugural George Friday Day, honoring a pivotal civil rights case investigated by the Commission nearly 80 years ago.

Commissioner Scheiner recognized Asian American and Pacific Islander Heritage Month and Jewish American Heritage Month. The Commission also acknowledged Chair Thomas George's belated birthday.

**4. Discussion and Review of Proposed Revisions to and Public Comments Received on MCAD Draft Rules of Procedure, 804 CMR 1.00**
The Commission continued its review of proposed revisions to 804 CMR 1.00 and public comments received.

Chair Thomas George noted that a revised cleanup version had been circulated following prior discussions. The Commission resumed its review near 804 CMR 1.08, concerning investigative dispositions and appeals, but first addressed several consistency items.

Chair Thomas George suggested revising the definition of "probable cause" to match the language used in 804 CMR 1.08(1)(f). She proposed language stating that probable cause means it is more probable than not that a respondent committed an unlawful practice or violated a statute under the Commission's jurisdiction. The Commission agreed that the broader wording would avoid confusion and cover Chapter 151B, Chapter 151C, and other statutes enforced by the Commission.

Chair Thomas George next proposed revising the definition of "public hearing" by replacing

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"charges" with "claims" and removing "in the complaint." She explained that, at the public hearing stage, the matter concerns claims certified to public hearing rather than the original complaint.

The Commission then discussed 804 CMR 1.04(7), concerning pseudonym complaints. Chair Thomas George recommended changing "a complaint" to "the complaint" to make clear that, if a motion to proceed under a pseudonym is denied, the complainant may not submit a new or materially different complaint. General Counsel Hosler explained that, as a technical matter in CCMS, complaint information may be entered before the pseudonym motion is resolved, but the complaint is not filed until the issue is decided. Commissioner Mitnick questioned the use of "authorize," and the Commission discussed using "consent" instead.

The Commission next discussed 804 CMR 1.05(1), concerning preservation of evidence. Chair Thomas George initially questioned whether language stating that notice of a complaint may occur during preliminary investigation was necessary. She expressed concern that the language could create additional burdens if limited contact with a respondent were later argued to trigger preservation duties or dismissal-notice obligations.

Commissioner Scheiner asked whether the language served a useful purpose by warning respondents that they may have a duty to preserve evidence once they are aware of a complaint. General Counsel Hosler explained that this was the reason the sentence had been included. Executive Director Memmolo noted that CCMS has the capacity to serve during preliminary investigation if needed. Chief of Investigations Roberts explained that Investigations may send preservation-of-evidence letters when a respondent is notified before formal service.

Commissioner Locke stated that, if MCAD contacts a respondent about a complaint, the first communication should include a preservation notice to avoid later disputes about notice. Commissioner Mitnick noted that preservation duties may arise even before MCAD affirmatively notifies a respondent, depending on what the respondent already knows. Commissioner Brown asked how preservation and closure letters would be sent. The discussion emphasized that clear opening and closing letters would help respondents understand the process.

After discussion, Chair Thomas George stated that she was comfortable with the preservation-letter approach. She clarified that minor contact, such as confirming an email address or number of employees, would not amount to notice of the allegations. However, if MCAD contacts a respondent in a way that informs the respondent about the complaint or allegations, a preservation-of-evidence letter should be sent.

The Commission then discussed 804 CMR 1.08(4), concerning motions for reconsideration. Chair Thomas George stated that a respondent's motion for reconsideration based on the absence of a genuine issue of material fact should be filed after the close of discovery but before issuance of the certification order. The Commission agreed that the language should make both requirements clear.

The Commission next discussed 804 CMR 1.12(C), concerning appeals and the Commission's

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discretion to hold hearings. The discussion clarified that appeals would generally proceed by written review, but the Commission may allow a live hearing in person, by telephone, or virtually, at its discretion. Commissioner Locke raised a harmonization issue between written appeals and oral hearings. The Commission discussed clarifying that the written submission is the appeal, while a live hearing is an additional process the Commission may allow.

The Commission also discussed removing language that "strongly discouraged" certain filings, agreeing that regulatory language should be neutral and should state the operative rule directly. The Commission revisited 804 CMR 1.08(15) and confirmed that the phrase "within six months of dismissal" would be removed.

The Commission then discussed written appeals and extensions of time. Chair Thomas George questioned whether the regulation should limit parties to only one extension where good cause is shown. She noted that serious circumstances, such as illness or hospitalization, may justify more than one extension. The discussion addressed the balance between flexibility and administrative efficiency. Commissioner Brown expressed concern that repeated extension requests can become burdensome and delay the process. The Commission appeared to favor keeping the one-extension limitation while recognizing that reasonable accommodation requests remain available separately.

The Commission next discussed 804 CMR 1.09(A), concerning relief that may be sought during conciliation. A public comment suggested adding interest and out-of-pocket expenses. The Commission discussed whether interest should be listed because conciliation is a settlement process rather than an adjudicated award. The Commission recognized that parties may already raise interest and out-of-pocket expenses during settlement discussions, and that the existing list is non-exhaustive.

The Commission then discussed settlement offers made during the conference phase. A public comment suggested adding future litigation costs and maintenance of profitability as factors in determining whether a settlement offer is reasonable. The Commission discussed these suggested additions but did not appear inclined to include them, noting that the analysis should focus on the value and merits of the case rather than speculative costs or broader business considerations.

A break was called at approximately 11:27 AM. The meeting resumed at approximately 11:40 AM.

After the break, the Commission resumed with 804 CMR 1.10, concerning discovery. The Commission discussed clarifying that a party responding to a request for production must serve both a written response and copies of responsive documents within the applicable timeframe. The purpose was to avoid an interpretation that a party could meet the deadline by serving only objections or promises to produce documents later.

The Commission also discussed whether subpoena language in 804 CMR 1.10 should cross-reference 804 CMR 1.14. The discussion recognized that the cross-reference may provide clarity, although some Commissioners noted that the term "subpoena" may already be sufficiently understood.

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The Commission discussed removing the word "papers" from document-production language because the term is already included within the definition of "documents."

The Commission next reviewed certification of claims to public hearing and identified a typo. The Commission determined that only the typo needed to be corrected.

The Commission then discussed the public hearing section and who may adjudicate public hearings. Commissioner Locke noted that, because the following subsection addresses substitution of an adjudicator, the section should first identify that a public hearing may be conducted by an adjudicator appointed by the Commission. The Office of the General Counsel agreed that this was one of the places where the regulations should refer to an individual adjudicator appointed by the Commission.

The Commission also discussed whether to reference M.G.L. c. 30A, § 11, which governs adjudicatory proceedings. The discussion clarified that the adjudicator may be the Commission or an individual adjudicator appointed by the Commission.

The Commission reviewed language concerning public hearing conduct. Chair Thomas George recommended replacing "representatives" with "counsel" because, at the public hearing stage, parties may appear pro se or through an attorney admitted to the Massachusetts bar.

The Commission then discussed protective orders at the public hearing stage and whether good cause should be expressly connected to the public interest. The discussion emphasized that public hearings involve a heightened public interest because evidence is presented in a public forum. Commissioner Locke explained that including public-interest language would preserve the Commission's discretion if a decision were later challenged. The Commission agreed to keep public-interest language in the public hearing protective-order provision.

The Commission discussed a public comment from MCAD staff concerning the role of the Commission after a certification order issues. The discussion clarified that, once the Commission issues a certification order and Commission Counsel prosecutes the matter, Commission Counsel appears on behalf of the Commission in the prosecutorial role and may proceed it with or without the complainant's participation.

The Commission also discussed default at the public hearing stage. Chair Thomas George suggested that, if the defaulting party is the complainant, the complaint "may be dismissed," rather than requiring dismissal, to preserve the Commission's discretion. The Commission also discussed that, if a respondent defaults, the hearing proceeds, but the prosecuting party must still present sufficient evidence to establish liability and remedy.

The Commission discussed attorney's fees language. The bar had objected to use of the word "average" and suggested "fair market rate." The discussion also addressed proposed fee-petition requirements, including detailed contemporaneous time records, a breakdown of costs, and a supporting affidavit from every attorney for whom fees are sought. The Commission discussed concerns with the phrase "local market" because it may create confusion about the relevant geographic market. The discussion appeared to favor using "fair market hourly rate," with the

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hearing officer or hearing commissioner retaining discretion to evaluate supporting materials submitted with fee petitions, including affidavits, fee charts, or other documentation as appropriate.

The Commission discussed revising the heading "Motions and Requests" to "Requests and Motions" because the first subsection concerns requests and the remaining provisions concern motions.

The Commission discussed removing explanatory language stating that pre-probable cause motions slow investigations. Chair Thomas George stated that the regulations should state the operative rule directly and avoid opinion-style language. The Commission acknowledged the workload caused by motion practice but appeared to support removing the explanatory language from the regulation.

The Commission discussed reorganizing the motion section for clarity, including separate subsections for authority, context, and filing. The Commission also discussed public comments requesting additional motion categories, but the Office of the General Counsel did not recommend expanding motion practice at this time.

The Commission reviewed reply and sur-reply memoranda. Chair Thomas George recommended removing language stating that such filings are "strongly disfavored" and retaining the substantive limitation that they may only address matters raised in the opposition or reply that were not, and could not have been, addressed previously.

The Commission also discussed reorganizing the post-probable cause motion section. Commissioner Locke suggested that the section should begin with the general procedure before addressing motions at public hearing. The Commission agreed the section should be reorganized for clarity.

Before moving to 804 CMR 1.14, the Commission briefly returned to the definitions section. Chair Thomas George suggested simplifying the definition of "order" to read: "Order means an instruction, ruling, direction, or decision of the Commission." The Commission also discussed revising the definition of "party" to avoid stating that a complaint is certified to public hearing, because claims, not complaints, are certified.

The Commission then moved to 804 CMR 1.14. Chair Thomas George raised a concern about language requiring a showing of economic hardship and interest of justice before a party may request that the Commission issue a subpoena. She questioned whether that language conflicted with M.G.L. c. 30A, § 12(3). The Commission discussed whether the standard should focus on economic hardship, the interest of justice, public interest, or the Commission's discretion.

The Commission clarified that the issue is not whether a party may seek subpoenas generally, but whether the Commission itself should issue a subpoena on a party's behalf. The preferred approach was to state that, upon a showing of economic hardship, a party may request that a subpoena be issued by the Commission, and that issuance remains within the Commission's discretion.

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General Counsel Hosler confirmed that the next draft would incorporate the agreed-upon edits, including the broader cleanup to use "Commission" consistently throughout the regulations.

**5. Next Meeting Dates**
The next meetings were confirmed for Wednesday, May 27, 2026, from 5:00 PM to 7:00 PM, and Friday, May 29, 2026, from 10:00 AM to 12:00 PM.

**6. Other Business**
The Chair asked whether there was any other business. No additional business was raised.

**7. Adjournment**
Commissioner Mitnick moved to adjourn the meeting. Chair Thomas George seconded the motion. The motion passed unanimously, and the meeting adjourned at approximately 1:02 PM.

**Meeting Materials**
Meeting materials included the draft proposed revisions to 804 CMR 1.00, the Office of the General Counsel memorandum, written public comments received regarding the proposed revisions, and supporting materials presented or referenced during the meeting.

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# 804 CMR 1.00: RULES OF PROCEDURE

Section

1.01: Scope and Purpose
1.02: Definitions
1.03: Commissioner Authority
1.04: Complaint Filing, Amendment, Withdrawal
1.05: Investigation and Answer of Complaint
1.06: Mediation
1.07: Investigative Default Procedure
1.08: Investigative Disposition, Complaint Dismissals and Appeal
1.09: Conciliation
1.10: Discovery
1.11: Certification of ~~Issues~~ Claims to Public Hearing
1.12: Public Hearing
1.13: Requests and Motions ~~and Requests~~
1.14: *Subpoenas*
1.15: Parties and ~~Counsel~~Representatives
1.16: Service and Notice ~~by the Commission~~
1.17: Computing and Extending Time
1.18: ~~Proceedings on~~ Commission Initiated Complaints
1.19: Emergency Proceedings
1.20: Language Assistance Services
1.21: Access to Commission Materials and Restrictions to Personal Data
1.22: Sanctions
1.23: Full Commission Review
1.24: Judicial Review
1.25: Judicial Enforcement

## 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 ~~of the public interest~~. In the interests of justice, the Commission~~, through its staff and individual Commissioners,~~ 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. ~~enforced by the Commission~~ Efficiency in case processing shall be dedicated to these purposes.

## 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. ~~.~~

~~Commissioner means one of three five members of the Commission appointed by the Governor of the Commonwealth of Massachusetts in accordance with M.G.L. c. 6, § 56, which includes athe Chairperson of the Commission, or their designees.~~

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

Complaint means a document containing ~~the~~ allegations of unlawful discrimination filed with the Commission. ~~and includes HUD housing complaints, absent a special rule or exception.~~

Counsel~~, Counsel of Record, or Attorney of Record~~ means an attorney in good standing who has a notice of appearance on a particular matter 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.

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~~obtained either directly or, if necessary, after translation~~ and made into a reasonably usable form.

Duly Authorized Representative ~~(DAR)~~ 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-determination~~pre-probable cause~~, primarily through the MCAD Case Portal~~. ~~, including an attorney in good standing, who has filed a notice of appearance in a matter before the Commission.~~

*Ex Parte* means without notice to or argument from the ~~adverse~~ 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~~ or allowed by the Commission on a case-by-case basis~~.

Full Commission means at least ~~two but sometimes~~ three Commissioners acting together.

~~Hearing Commissioner means the Commissioner designated by the Chairperson of the Commission to adjudicate complaints of discrimination, or their other designee of the Chair, including a person found to be qualified by the Commission as a Hearing Officer, or the Full Commission in the event the Full Commission orders and presides over a public hearing.~~

~~HUD Housing Complaint means any complaint alleging discrimination in housing under M.G.L. c. 151B which is dual filed with the U.S. Department of Housing and Urban Development.~~

~~Investigating Commissioner means the Commissioner designated by the Chairperson of the Commission to investigate a complaint of discrimination, or their designee.~~

Investigative Disposition means the official document issued by the Commission upon conclusion of the investigation containing the determination of the ~~Investigating Commissioner~~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~~ after completion of a user registration process~~.

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

Order means an ~~a~~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, ~~after a complaint is certified to public hearing,~~ the Commission ~~also becomes~~ is the primary ~~a~~ 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, and any ~~other~~ legal entity, and shall not mean artificial intelligence. ~~.~~

Personal Service means ~~actual~~ 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-determination means the period of time beginning with the issuance of an investigative disposition.~~Post-Probable Cause means the period of time after the issuance of a probable cause disposition.

~~Pre-determination 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.~~

Preliminary ~~Hearing~~ Appeal means a~~n~~ complainant's ~~informal~~ appeal ~~hearing held at the Commission upon written request of a complainant or their attorney within ten days of service of an adverse investigative disposition~~ of an investigative disposition where probable cause is not found, except for administrative dismissals, as provided for in ~~under~~ 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 ~~under~~ or a violated ~~any~~a statute ~~enforced~~under the Commission's jurisdiction ~~by the Commission~~.

*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.

*Pro Se* means a person appearing on their own behalf and without a representative~~who is not represented by an attorney~~.

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~~e~~ ~~charges~~ claims ~~of the complaint~~ certified to hearing. ~~by the Chair.~~ ~~by the Investigating Commissioner.~~

Representative means counsel for a party ~~an attorney in good standing with a notice of appearance on file at the Commission.~~ or a ~~DAR~~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 ~~or a Commissioner~~ of its ~~its~~ ~~their~~ own accord which does not require a motion or request from ~~prompting or suggestion by~~ a party.

*Subpoena Duces Tecum* means an order commanding the production of ~~evidence including specified books,~~ documents or tangible things~~, or records~~; such order ~~command~~ may be

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included in a *subpoena* commanding testimony or it may be issued independent of or in *lieu* of testimony.

1.03: ~~Commissioner~~ Authority for the Administration of Complaints

In all matters involving the administration of complaints filed with the Commission, the authority to take any action ~~pursuant to M.G.L. c. 151B, and unless otherwise specifically noted in~~ ~~where Commissioner authority is~~ specified in 804 CMR 1.00 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 with regard to the administration of complaints. ~~, one any Commissioner, including the Chair, may act for the Commission. Where authority of the Chair is specified in 804 CMR 1.00, the Chair has exclusive authority to act for the Commission, absent designation of the matter to another Commissioner or MCAD staff member. Where neither Commissioner nor Chair authority is specified in 804 CMR 1.00, the Commission staff hasve exclusive authority to act.~~

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) ~~The duly authorized~~A representative of 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 from the Commission's website.

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.

4. A complainant who wishes to proceed by pseudonym shall follow the procedures outlined in 804 CMR 1.04(7) and may only file such complaints with the Clerk's Office by U.S. Mail or courier or by visiting any one of the Commission's offices during regular business hours. Pseudonym complaints filed through the MCAD Case Portal shall be administratively dismissed without prejudice.

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

~~By MCAD Case Portal. All complaints filed pursuant to 804 CMR 1.04(1) by persons and organizations other than the Commission shall be filed through the MCAD Case Portal subject to the following provisions and exceptions:~~

~~DARs shall file complaints pursuant to 804 CMR 1.04(1)(b) by providing assistance to complainants with filing through the MCAD Case Portal on their own behalf under 804 CMR 1.04(1)(a). Upon filing a complaint, the complainant may then formally authorize the DAR to act on their behalf pursuant to 804 1.15(13).~~

~~Persons filing a complaint pursuant to 804 CMR 1.04(1)(a) may file through the MCAD Case Portal with the assistance of the Commission by visiting any of the Commission's offices during regular business hours.~~

~~Persons filing a complaint pursuant to 804 CMR 1.04(1)(a) may file a complaint with the Clerk's Office by U.S. Mail although such filings are strongly discouraged and may cause delay in the processing of the complaint. Upon the filing of a~~

~~complaint by U.S. Mail, the complainant shall be required to comply with 804 CMR 1.15(16).~~

~~The filing of a complaint pursuant to 804 CMR 1.04(1)(a) by any method other than the MCAD Case Portal may be allowed as a reasonable accommodation for disability.~~

~~Pseudonym complaints shall not be filed through the MCAD Case Portal. A complainant who wishes to proceed by pseudonym shall follow the procedures outlined in 804 CMR 1.04(7) and may only file such complaints with the Clerk's Office by U.S. Mail or by delivery of the complaint to any of the Commission's offices during regular business hours. Pseudonym complaints filed through the MCAD Case Portal shall be administratively dismissed.~~

~~(a) By Delivery: A complaint may be filed by delivering a copy in person during regular Commission business hours or by U.S. mail to any of the Commission's offices.~~

~~(b) By Intake. A complaint may be filed at any of the Commission's offices by participating in the intake process with a Commission representative and signing the complaint. A complainant who, because of a disability, is unable to visit a Commission office may request an accommodation to conduct the intake process by telephone and may return the signed complaint to the Commission by U.S. mail for filing.~~

(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 ~~alleged unlawful conduct~~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. ~~The parties are represented by counsel~~Every party is represented by ~~an attorney~~counsel;

2. The parties execute an agreement, signed by the parties, counsel ~~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 counsel ~~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. The Commission shall toll the statutory filing deadline for 90 days from the date the agreement is submitted to the Clerk's Office, or until the mediator and parties have reported that they are unable to resolve the matter through mediation, whichever date is sooner; and~~

~~5.~~4. If the parties are unable to resolve the matter through mediation the ~~person~~ complainant ~~claiming to be aggrieved by the alleged violation~~ shall file a complaint ~~using the MCAD Case Portal~~pursuant to 804 CMR 1.04(2) within ~~21~~ 120 days of

~~reporting that the mediation was unsuccessful~~filing the agreement to mediate with the Clerk's Office, and the complaint~~. The filing date shall~~ will be deemed filed ~~to be~~ 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 ~~statute of limitations~~deadline for filing a complaint with the Commission may be ~~equitably tolled~~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 ~~Investigating Commissioner~~Commission. ~~(e) Discovery Rule. The deadline for filing a complaint begins at the time the complainant knew or should have known about the allegedly unlawful conduct.~~

(5) Form. ~~The~~ All complaints shall be in writing. Complaints filed under 804 CMR 1.04(1)(a)~~, and~~ 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 ~~an attorney~~ 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;

(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(4)(a):~~.~~

(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~~the~~ claim.

(7) ~~Use of~~ Pseudonym Complaints. In exceptional circumstances, the ~~Investigating Commissioner~~Commission may determine that the public interest ~~requires~~ supports allowing a complainant ~~, including a parent or legal guardian filing on behalf of a minor child,~~ to proceed ~~before the Commission~~ under a pseudonym.~~,~~ ~~which~~ The use of a pseudonym shall not impact the ~~Commission's~~ ability to issue protective orders. Any complainant may request to proceed ~~via~~under a pseudonym, including a parent or legal guardian filing on behalf of a minor child, or ~~complainants who were~~an individual who was a minor child~~ren~~ at the time of the alleged discrimination. ~~The use of a pseudonym is not permitted after certification of the complaint to public hearing, except where noted otherwise.~~ The use of a pseudonym may be permitted ~~when~~ where the complainant demonstrates a specific overriding ~~reason~~ need for confidentiality ~~unique to complainant and~~based on substantial safety or privacy interests ~~are demonstrated~~. ~~The following requirements apply to pseudonym complaints:~~

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

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

~~1.~~2. ~~the filing shall be~~Submit both documents by U.S. Mail to the Clerk's Office or ~~hand delivery~~by visiting ~~at~~ a Commission office only;

(b) Form of the Complaint. The pseudonym complaint shall ~~conform~~ comply with~~to~~ 804 CMR 1.04(1) through (6), except that it shall not include the identity of the complainant.~~,~~ ~~and the pseudonym complaint shall be docketed and submitted for review and authorization in accordance with 804 CMR 1.05(2);~~

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

1. The motion ~~to allow the use of a pseudonym shall be filed under automatic protective order by the Investigating Commissioner~~Commission ~~and shall thereafter be unavailable to the public or the respondent(s)~~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 to allow the use of a pseudonym shall contain the complainant's full name and conform to 804 CMR 1.13(1), and shall articulate and set forth, with specificity, the reasons why the use of a pseudonym should be allowedfor supporting the request;

(c) The motion to allow the use of a pseudonym shall conform to 804 CMR 1.13(9)(b) except that the motion may be filed *ex parte*;

1.3. If the Commission Investigating Commissioner issues an order granting the motion to allow the use of a pseudonym is grantedgrants the mMotion:

a. The complaint shall be docketed and an order allowing the use of a pseudonym shall be served with the complaint accordinglyupon authorization to formal investigation pursuant to 804 CMR 1.05(3)shall be processed in accordance with 804 CMR 1.054(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. The Commission shall then provide such information it deems necessary to permit the respondent to respond.

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

b.d. If the respondent is unable to identify with sufficient assurance the identity of the complainant, the respondent shall notify the Commission in writing within ten days of its receipt of the order, and the Commission shall determine and provide the information it deems necessary to permit the respondent to file a position statement;

e. The parties shall omit the identity of the complainant in documents filed with the Commission or move for a protective order to prevent public disclosure of the filing.

4. If the Commission denies the motion is denied: The Complainant shall have 30 days from the receipt of the denial to authorizeconsent to the filing of athe file a complaint using their real name. The Commission shall deem the filing date of the complaint to be the date the pseudonym motion was originally filed.

(d) If the Investigating Commissionerissues an order denying the motion to allow the use of a pseudonym is denied, the complaint shall not be docketed and the complainant shall have 30 days from receipt of the order denying the request to amend file a complaint using their own name. If the complainant files such complaint within 30 days the Commission shall deem the complaint filing date as allow the complaint to include the identity of the complainant by written communication with the Clerk's Officeand the original docket number assigned to the pseudonym complaint; failure to amend allow the complaint to proceed without a pseudonym within 30 days shall result in the dismissal of the complaint pursuant to 804 CMR 1.08(1)(d);the date the motion to allow the use of a pseudonym was filed with the Commission, upon request by the complainant.

(e)(d) An Investigating CommissionerPre-determination, the Commission may grant a request for a pseudonym complaint or *sua sponte* require the use of a pseudonym in a complaint. The Chair may *sua sponte* require the use of a pseudonym or grant a request to use a pseudonym post-determination or in any complaint, including those initiated pursuant to 804 CMR 1.18., The Commission and the Chair and may issue protective orders and amendments to the complaint as necessary to accomplish that these purposes.

(8) Amendments to the Complaint in General.

(a) How MadeMethod. A complaint may be amended at any time, either by motion from the complainant, *sua sponte* 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., including claims or respondents Ppreviously 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). . if supported by evidence discovered during the prosecution of the remaining claims. Regardless of how the amendment was made, amendments shall relate back to the original filing date of the complaint.

(9) Procedure for Amending Complaint.

(a) *Sua Sponte* Amendments by the Commission. Pre-determinationPre-probable cause *sua sponte* AaAmendments may shall be made in writing by the Investigating Commissioner Commission, and may be made at any time after the filing of the complaint and before the issuance of a public hearing decision under 804 CMR 1.12. except that amendments relating to complaints initiated pursuant to 804 CMR 1.18 shall be made by the Chair. Post-determination and at any time prior to certification to public hearing, *sua sponte* amendments shall be made in writing by the Chair. After certification to public hearing, *sua sponte* amendments shall be made in writing and by a Hearing Commissioner at any time after certification to public hearingby amending the certification order. In each instance prior to public hearing, The Commission shall serve each party with an amended complaint or certification order whenever *sua sponte* amendments are made. the amendment(s) or order permitting the amendments shall be served by the Commission upon each party.

(b) Amendments by Motion from Complainant. Motions to amend the complaint are governed by 804 CMR 1.13., and shall include a copy of a proposed amended complaint for filing and service.

(c) Amendments to HUD Housing Complaints. Amendments to An amended HUD 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. HHUD housing complaints may be amended at the discretion of the CommissionInvestigating Commissioner. Events occurring after amending a HUD housing complaint may be the subject of a new complaint.

(d) Response to Order for a More Definite Statement. A complainant shall amend the complaint in accordance withrespond to an order by the Investigating Commissioner Chair 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. The Investigating Commissioner or Hearing Commissioner may request a response to an amendment from any named or proposed party.

1. Pre-determinationPre-probable cause Aamendments. 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-determinationPost-probable cause Aamendments. The Unless otherwise ordered by the Commission, the respondent may not amend the position statement post-determinationpost-probable cause, although they may oppose a post-determinationpost-probable cause motion to amend the complaint in accordance with 804 CMR 1.13 or in response to an order by the Commission. request from the Chair or a Hearing CommissionerCommission.

(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 or individual. Nothing in 804 CMR 1.04(1) limits the discretion of the Commission Hearing Commissioner 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 Investigating CommissionerCommission dismisses the complaint pursuant to 804 CMR 1.05(2).

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(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, t~~T~~he 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, ~~within the first 90 days of filing a complaint~~, and such request shall be in writing and shall set forth the reasons therefor.

(b) The ~~Investigating Commissioner~~Commission may grant or deny ~~in writing~~ 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. 151C, or M.G.L c. 272, §§ 92A, 98, or 98A, or any other statutes under the jurisdiction of the Commission, shall promptly provide the Commission ~~General Counsel of the Commission~~ with a copy of the complaint filed in court.

## 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 ~~charge~~ 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) ~~Review and Authorization~~Preliminary Investigation. The Commission ~~may~~ shall undertake a preliminary ~~review~~ investigation of a complaint to determine if further investigation utilizing the process within 804 CMR 1.04(4) through (10) would serve the public interest and may dismiss a complaint after preliminary investigation ~~at such stage~~ subject to the following provisions:

(a) Manner of Investigation. A~~The~~ 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. ~~determine that further investigation is unwarranted due to a~~ lack of standing,
2. lack of jurisdiction;~~,~~
3. u~~U~~ntimeliness;~~,~~
4. failure to state a claim of discrimination;~~,~~
5. frivolous claims~~, or~~;
6. ~~where~~ allegations are ~~facially~~ implausible or incapable of verification~~, or vague~~;~~.~~
7. ~~Allegations~~the alleged~~ of~~ discriminatory conduct has been sufficiently remediated or resolved~~monetary and non-monetary harm appear *de minimus*, moot, or mitigated during preliminary investigation~~;
8. ~~allegations contain tenuous~~insufficient nexus between protected class and allegedly discriminatory conduct; or

~~1.~~9. The public interest requires focusing Commission resources on complaints with greater impact on the mission to eradicate discrimination.

~~(b)~~(c) Notice of Dismissal. If the Commission determines that ~~further~~ authorization of a formal investigation would not serve the public interest pursuant to 804 CMR 1.05(2)(a), the Commission shall state the reasons for the determination in a dismissal notice served upon complainant and any respondents notified of the complaint~~only~~. Such dismissal notice, whether issued within the first 90 days of the filing of the complaint or later, shall constitute authorization to the complainant ~~under 804 CMR 1.04(12)(b)~~ to pursue a civil action pursuant to M.G.L. c. 151B, § 9.

~~(c)~~(d) Appeal of Dismissal. The complainant may appeal a dismissal issued pursuant to 804 CMR 1.05(2)(b) by filing ~~with the Clerk's Office a written request for a preliminary hearing pursuant~~a notice of appeal to 804 CMR 1.08(4)(b).

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

(4) Manner of Formal Investigation. Upon authorization pursuant to 804 CMR 1.05(3), the ~~Investigating Commissioner~~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) ~~Witness i~~Interviews of parties, witnesses or other person;

(b) Requests for production or inspection of documents~~, papers~~ 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) ~~Service of interrogatories on either~~Requests for information from any party;

(e) Conducting depositions; and

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

~~(g) Considering the input of the parties in developing its requests for information. Accordingly, parties may request that the Commission seek certain information or conduct an investigative conference as part of its investigation.~~

(5) Prompt Investigation.

(a) ~~HUD~~ Housing Complaints. The investigation of a complaint alleging discrimination in housing ~~dual filed with HUD~~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 ~~HUD~~ Housing Complaints. The investigation of a complaint alleging discrimination in all areas within the jurisdiction of the Commission other than housing complaints ~~dual filed with HUD~~ 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 ~~Investigating Commissioner~~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 ~~Investigating Commissioner~~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:

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(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 ~~Investigating Commissioner~~ 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:
~~(b)~~(a) ~~Complaints Other than HUD Housing Complaints.~~ 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.

~~1. HUD Housing Complaints.~~

~~a. A respondent in a housing discrimination case dual filed with HUD shall file a position statement within 14 days of receipt of the notice of authorized investigation.~~

~~b. Due to the 100-day period in which to investigate HUD housing complaints under 804 CMR 1.05(5)(a), respondents to HUD housing complaints are strongly discouraged from requesting extensions of time in which to file position statements. Upon written request by the respondent, and for good cause shown, the Commission may grant an extension of not more than seven days in which to file the position statement.~~

~~c. A respondent who fails to file a position statement in accordance with 804 CMR 1.05(8)(a)2.a. or within an extension of time granted pursuant to 1.05(8)(a)2.b. remains obligated to file the position statement.~~

~~(c)~~(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).
~~(d)~~(c) Service. Each respondent shall serve the position statement upon the Commission, the complainant, and counsel. ~~any attorney of record, for a complainant~~.
~~(e)~~(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 ~~its attorney~~, 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 ~~respondent's attorney~~.

~~(f)~~(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.
~~(c)~~(b) ~~Rebuttals to Position Statements for Complaints Other than HUD Housing Complaints.~~ 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 by the ~~Investigating Commissioner~~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.

~~1. Rebuttals to Position Statement for HUD Housing Complaints. Rebuttals to the position statement may be made in writing or verbally, but shall be made within~~

~~ten days of service of the position statement or request by the Commission. Upon request of the complainant, and for good cause shown, the Commission may grant an extension of not more than five days to file the rebuttal absent exceptional circumstances.~~

~~(d)~~(c) Service. A complainant shall serve a copy of the written rebuttal on a *pro se* respondent or on respondent's representative, ~~attorney~~, 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 ~~an~~ 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 ~~Investigating Commissioner~~Commission, which shall be granted at the discretion of the ~~Investigating Commissioner~~Commission.

(c) Participants. A party may be accompanied at an investigative conference by their ~~a~~ representative~~n attorney or other duly authorized 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 ~~Investigating Commissioner~~Commission.

(d) Conduct. The ~~Investigating Commissioner~~Commission shall conduct the investigative conference and control the proceedings. Parties and ~~or~~ their representatives may be questioned by the ~~Investigating Commissioner~~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 ~~Investigating Commissioner~~Commission shall decide who shall be heard and the order in which they are heard. The ~~Investigating Commissioner~~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 ~~Investigating Commissioner~~ 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 of 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) ~~Motion~~ Request for Protective Order. A party may ~~move~~ request~~for~~ a protective order to prevent the disclosure of information provided during the investigation for good cause shown~~, and the Investigating Commissioner~~~~Commission may allow such motion request if the public interest and other circumstances warrant such order~~. The ~~Investigating Commissioner~~Commission may seek a response from the non-~~moving~~ requesting party. Information that is subject to a protective order 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.

~~(13) Predetermination Discovery Conducted by the Parties. The parties do not have a right to conduct discovery during the investigation of the complaint. If both parties are represented by counsel, they may be permitted to conduct discovery by *sua sponte* order of the Investigating Commissioner or upon motion by a party. Any such discovery shall focus solely on the allegations of the complaint and any defenses thereto, and shall be~~

~~conducted in accordance with 804 CMR 1.10, subject to the following limitations and additional provisions:~~

~~(a) Limited Discovery.~~

~~1. Absent a specific contrary order of the Investigating Commissioner, discovery by each party shall be limited to 15 interrogatories, including subparts, 15 requests for production of documents, and six hours of deposition by each side;~~

~~2. Parties shall respond to interrogatories and requests for production of documents within 30 days of service;~~

~~3. Notice of depositions shall be served at least 14 days prior to the date of deposition;~~

~~4. Unless a different time frame is granted, discovery shall be completed within six months of issuance of discovery order; and~~

~~5. The parties may not alter the limitations in 804 CMR 1.05(13)(a) by agreement under 804 CMR 1.10(9).~~

~~(b) Failure to Conduct Discovery. Failure to conduct predetermination discovery in good faith, when ordered by the Investigating Commissioner, may be deemed cause for:~~

~~1. Administrative dismissal of the matter pursuant to 804 CMR 1.08(1)(d) for unreasonable refusal by complainant to cooperate with the processing of the matter;~~

~~2. Investigative default pursuant to 804 CMR 1.07 for unreasonable refusal by respondent to appear and cooperate with the processing of the matter; and~~

~~3. The Investigating Commissioner may order the party failing to conduct discovery in good faith, or the attorney advising him or her, or both, to pay the requesting party's reasonable expenses, including attorney's fees and costs, and the Commission's expenses caused by the failure.~~

~~(c) Discovery Submission. Parties permitted to conduct predetermination discovery shall file with the Commission and serve each other party with a memorandum describing facts relevant to a causal determination, including any agreed upon facts. The memorandum shall not exceed 15 double-spaced pages, and shall be filed within 30 days of the end of the discovery period. Upon request by the Investigating Commissioner, the party shall provide copies of answers to interrogatories, relevant documents produced and deposition transcript testimony which support the facts relevant to the determination.~~

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 ~~the Chair may do so post probable cause~~ 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 mediation of a complaint shall be performed by the Investigating Commissioner~~Mediation may be offered to the parties at the discretion of the ~~Commission or the Chair~~.

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

(c) Pursuant to 804 CMR 1.06(1)(a) and (b), 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.

(d) 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.

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

(f) ~~At a predetermination mediation, a party may be represented by a duly authorized representative~~Representation for the parties at a mediation shall be consistent with 804 CMR 1.15(14).

~~(2) Additional Provisions Applicable to Mediation of HUD Housing Complaints. The Commission encourages the parties to resolve HUD housing complaints through voluntary~~

~~settlement prior to the issuance of an investigative disposition through mediation, subject 804 CMR 1.06(1)(a) through (f) and to the following additional provisions:~~
~~(3)~~(2) ~~The Investigating Commissioner~~Commission ~~shall~~ may ~~seek the parties' voluntary participation in pre-determination mediation at the Commission within 30 days of the filing of the complaint, unless impracticable to do so.~~
~~(a) Any party who declines to participate or seeks postponement of a pre-determination mediation shall provide written notice to the Investigating Commissioner~~Commission ~~within 48 hours of the scheduled mediation date. Failure to provide such notice without good cause may result in sanctions against the party failing to give notice.~~

1.07: Investigative Default Procedure

(1) Notice of Consequences for Failure to Answer or Participate. If a respondent fails to answer a ~~verified~~ complaint or otherwise fails to participate in the investigation, the ~~Investigating Commissioner~~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 ~~Investigating Commissioner~~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) If sanctions are imposed, the Investigating Commissioner~~Commission ~~may also order the payment of reasonable costs and attorney's fees associated with the failure to cooperate, to be paid by the defaulting party to the Commission and other parties.~~
~~(c)~~(b) After the imposition of sanctions, the ~~Investigating Commissioner~~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~~ies~~ or its ~~counsel~~ 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 ~~Investigating Commissioner~~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. ~~. The respondent shall include~~including a position statement ~~in the petition to remove default~~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), ~~T~~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. ~~or 3.~~
(b) Withdrawal of Complaint. The Commission shall dismiss a complaint properly withdrawn pursuant to 804 CMR 1.04(12), although ~~the Chair it~~ it may decide to file a

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Commission initiated complaint based on the same allegations pursuant to 804 CMR 1.18.

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

(d) Administrative Dismissal. ~~If the public interest so requires, t~~The ~~Investigating Commissioner~~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 ~~and other conduct providing grounds for sanctions in 804 CMR 1.22~~, 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 ~~Investigating Commissioner~~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 ~~Investigating Commissioner~~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 ~~Investigating Commissioner~~Commission may reopen an administratively dismissed case for good cause shown ~~within six months of dismissal~~.

(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 ~~Investigating Commissioner~~Commission may require the parties to submit the terms of such settlement in writing to the Commission for review.

b. ~~Except in HUD housing complaints dual filed with the U.S. Department of Housing and Urban Development or in complaints filed against Commonwealth executive branch agencies, t~~The Commission may keep settlement terms confidential at the request of the parties unless confidentiality is precluded by law, Commission contractual ~~workshare~~ 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 ~~Investigating Commissioner~~Commission ~~or the Chair~~ 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) ~~Causal~~ Determinations After Formal Investigation.

1. Probable Cause. A determination of probable cause shall be made when the ~~Investigating Commissioner~~Commission~~–~~ concludes ~~Commission recommends~~ after formal investigation of the complaint 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.~~, and the Chair authorizes the probable cause determination.~~ ~~Disputes involving genuine issues of material fact shall be reserved for a fact finder at public hearing.~~ ~~Right to Elect Judicial Determination.~~ If the ~~Investigating Commissioner~~ ~~Chair~~ Commission finds probable cause to credit the

allegations of any housing complaint, ~~including those dual filed with HUD,~~ the ~~Investigating Commissioner~~ Commission ~~Chair~~ 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 ~~Investigating Commissioner~~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.

~~3. Multiple Determinations. Where the complaint contains claims of more than one unlawful practice, the Investigating Commissioner shall make a determination of probable cause or lack of probable cause with respect to each claim.~~

(2) Complaint Dismissals A~~a~~fter a Probable Cause Determination. ~~Investigative Disposition~~. The Commission ~~Chair~~ 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. ~~and 3.~~, including that the Commission ~~Chair~~ 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. ~~The Chair may dismiss a complaint utilizing the procedures within 804 CMR 1.08(1)(b), (c), (d), (e) at any time after the issuance of a probable cause determination pursuant to 804 CMR 1.08(1)(f)1. An administrative dismissal ordered by the Chair pursuant to 804 CMR 1.08(1)(d) may only be reopened by order from the Chair upon a showing of good cause.~~

(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.

~~(b)~~(a) Any party ~~respondent~~ may move for reconsideration of a probable cause determination for good cause at any time prior to the issuance of a certification ~~conference scheduled~~ order pursuant to 804 CMR 1.11(4~~3~~) ~~or issuance of a certification order if no conference is held, or within 30 days of the close of discovery, whichever is later, or within 45 days of certification to public hearing pursuant to 804 CMR 1.12 if no certification conference is held,~~ 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-determination~~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.

~~1.~~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.

~~2.~~3. Motions for reconsideration shall be served in accordance with 804 CMR 1.13.

~~3.~~4. The ~~Investigating Commissioner~~~~Chair~~ Commission shall render a decision on the motion for reconsideration, as soon as reasonably practicable.

~~4.~~5. The ~~Investigating Commissioner~~~~Chair~~ 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.

~~5.~~6. Upon reversal or modification of a probable cause determination, complainant does not have a right to a preliminary ~~hearing~~ 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.

~~(c)~~(b) Preliminary Appeal ~~of Disposition: Preliminary Hearing~~. The complainant may appeal an investigative disposition entered under 804 CMR 1.08(1)(c) and (f)2. ~~and 3.~~ as well as a dismissal pursuant to 804 CMR 1.05(2) by filing a ~~written request for a preliminary hearing with the Clerk's Office~~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 ~~Clerk's Office~~Commission shall notify all other parties of the appeal~~schedule a hearing and~~, except for appeals filed pursuant to 804 CMR 1.05(2)~~, shall notify all other parties of the appeal~~. The following provisions apply to all preliminary ~~hearings~~appeals:

1. All appeals shall be made in writing.

~~1.~~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 ~~Investigating Commissioner~~Commission.

~~2. All appeals shall be made in writing unless a live hearing, whether virtual, telephonic, or in person is necessary to accommodate disability. No audio, visual, digital, or other verbatim recording of the conference live hearing may be made.~~

3. Written appeals are due within 14 days of the filing of the notice of appeal. Extensions of time to file written appeals ~~are strongly disfavored and~~ will not be granted without a showing of good cause. ~~Upon a showing of good cause, t~~The Commission shall allow no more than one extension.

4. The Commission shall not consider written appeals filed after the original or extended deadline.

~~Only appeals that comply with 804 CMR 1.08(b) will be sent to a Commissioner for their decision.~~

5. ~~Written or oral a~~Appeals shall include reasons why the determination was made in error and supporting evidence.~~.~~

~~3.~~6. The ~~hearing~~ 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.

~~4.~~7. ~~The Investigating Commissioner shall preside at the hearing and may permit the complainant to present oral or written reasons why the determination is in error, and present supporting evidence as appropriate.~~ Except for appeals filed pursuant to 804 CMR 1.05(2), the respondent may also be permitted to present ~~oral or written~~ reasons why the determination should be sustained along with supporting evidence as appropriate.

~~5.~~8. In assessing the appeal, ~~T~~the ~~Investigating Commissioner~~Commission may request additional information and evidence~~ at or following the preliminary hearing~~.

~~6.~~9. ~~A The Investigating Commissioner~~ The Commission~~er~~ may, upon review of evidence presented:

a. affirm the disposition~~ or dismissal~~;

b. reverse the disposition ~~or dismissal~~ and issue a probable cause determination;

c. ~~reopen the case for further~~reverse the disposition and authorize or continue a formal investigation;

d. modify the disposition~~ or dismissal~~; or

e. take such other action as deemed necessary in the interest of justice.

## 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.~~ or 3.~~, the ~~Investigating Commissioner Chair~~ 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 ~~Chair ommission~~ 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 ~~private counsel~~counsel ~~an attorney~~ retained by complainant or by counsel for the

Commission. A complainant may not proceed ~~*pro se*~~ 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 ~~for costs incurred by the Commission or the opposing party~~ 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, and 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 Chair~~ Commission may terminate ~~its~~ its 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 Chair~~ Commission finds, for any reason, that voluntary agreement is not likely to result.

(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 Chair~~ Commission~~, through its individual Commissioners, from time to time,~~ may review compliance with the terms of any conciliation agreement. Whenever there is ~~Commission has~~ reasonable cause to believe that a respondent has breached a conciliation agreement, the ~~Investigating Commissioner Chair~~ 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 ~~CommissionChair~~ Commission~~. It may include any or all remedies available under 801 CMR 1.00~~. 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 ~~CommissionChair~~ Commission, but not to the complainant, the ~~Commission Chair~~ 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 ~~Investigating CommissionerChair~~ Commission to determine whether the public interest would be served by the continuation of the proceedings. The ~~Chair~~ Commission ~~Investigating Commissioner~~ 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 ~~CommissionChair~~ Commission. Discovery orders ~~may issue predetermination pursuant to 804 CMR 1.05(13), and discovery orders~~ may issue ~~post-determination~~ 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~~served~~. Permitted discovery may include, but is not limited to, interrogatories to parties, requests for the production of documents~~, papers~~ 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 ~~books,~~ documents or~~, or other~~ 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.

~~(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.

(b) 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~~,~~ ~~Papers~~ 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

~~1.~~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 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.

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(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 Chair~~ 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 ~~are available to~~ testify at p~~P~~ublic h~~H~~earing.

(j) The ~~Investigating Commissioner~~~~Chair~~ 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.

~~(j)~~(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.

~~(k)~~(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.

~~(7)~~(8) Protective Orders. Upon motion by a party or by a person from whom discovery is sought, and for good cause shown, the ~~Commission Chair~~ 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 Chair~~ Commission may order that any party shall comply with the discovery requests.

~~(8)~~(9) Failure to Comply with Discovery. Failure to comply with discovery may result in any of the following orders from the ~~Commission Chair~~ 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;

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

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~~(d)~~(e) An order dismissing the action or ~~rendering a judgment by default~~immediate certification to public hearing pursuant to 804 CMR 1.11; and

~~(e)~~(f) ~~In *lieu* of any of the foregoing orders or in addition thereto,~~ 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.

~~(9)~~(10) Stipulations Regarding Discovery Procedure. Unless the ~~Commission Chair~~ 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(4-7).

1.11: Certification of ~~Issues~~ Claims to Public Hearing

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

(2) Certification Process. The ~~Investigating Commissioner~~~~Chair~~ Commission may issue a certification order identifying the claims that shall be certified to public hearing ~~*sua sponte* or upon notification that discovery is complete, or, if circumstances so warrant,~~ T~~t~~he ~~Investigating Commissioner~~~~Chair~~ Commission may schedule a conference pursuant to 804 CMR 1.11(3) prior to issuance of such order to determine which ~~issues~~claims, if any, shall be certified to public hearing.

(3) Certification Conference. The ~~Investigating Commissioner~~~~Chair~~ Commission shall serve notice of the certification conference upon all parties and counsel ~~counsel of record~~. The ~~Investigating Commissioner~~~~Chair~~ 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 ~~issues~~ 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 ~~Investigating Commissioner~~~~Chair~~ 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 ~~counsel of record~~ and may provide the following:

(a) Certification of ~~issues~~ claims to be considered at a public hearing ~~before a Hearing Commissioner~~;
(b) Certification of one or more questions of law to the Full Commission; and
(c) Address any other matters the ~~Investigating Commissioner~~~~Chair~~ Commission deems appropriate in the public interest, including a denial of certification and reversal of the probable cause determination.

1.12: Public Hearings

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

(2) Substitution of Adjudicator.~~Hearing Commissioner~~. In the event of the unavailability of the original adjudicator ~~the Hearing Commissioner~~ to issue a written decision pursuant to 804 CMR 1.12(18), the Commission ~~Chairperson~~ shall assign another adjudicator

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~~Hearing Commissioner~~ 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 Chair~~ Commission shall hold a status conference with the parties and make good faith efforts at resolving the matter.

(b) In cases where the decision does not rest on credibility findings, a substitute adjudicator ~~Hearing Commissioner~~ 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~~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 ~~submitted in paper and electronic form, unless otherwise~~filed as ordered by the Commission ~~Hearing Commissioner~~.

(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 ~~the complaint~~ 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 ~~Hearing Commissioner Commission~~ Commission may take such action as ~~they it~~ it deem~~s~~ appropriate, including assessing ~~monetary~~ sanctions against a non-complying person pursuant to 804 CMR 1.22, and adjourning the proceedings.

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

(6) Continuance. Any party requesting a continuance shall make such request in writing ~~to the Hearing Commissioner~~ by motion pursuant to 804 CMR 1.13. Continuances shall be granted only upon a showing of ~~changed circumstances or~~ 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 ~~by the Hearing Commissioner Commission~~ 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 ~~Chair Commission~~, Commission, it ~~the Hearing Commissioner~~ 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 ~~of record~~, including counsel for the Commission, ~~neither a party nor a party's authorized representative~~ shall communicate *ex parte* with the adjudicator ~~Hearing Commissioner~~ 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.~~hearing decision.~~

(9) Protective Orders. Upon motion or *sua sponte*, the Commission ~~a Hearing Commissioner~~ may issue ~~A party may move for~~ 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 the Hearing Commissioner may allow such motion if it is in the public interest. A protective order may provide for the exclusion, limitation, redaction~~ng~~, or impoundment~~ing~~ of documentary or testimonial evidence at public hearing or within the public hearing record.

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(10) ~~Public Hearing Default Rules.~~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 representative, ~~the Hearing Commissioner shall enter~~ the party's default shall be entered on the record and ~~and serve it with~~ written notice of the default shall be served within ten days of the entry of default. If the defaulting party is the complainant, ~~the Hearing Commissioner shall dismiss~~ the complaint ~~shall~~may be dismissed ~~unless counsel for the Commission has appeared in the matter and is continuing with the prosecution of the complaint without the appearance of complainant~~. If the defaulting party is the respondent, ~~the Hearing Commissioner shall conduct~~ 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 ~~the Hearing Commissioner~~ 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.

~~(a) Entry of Default. Whenever any party duly notified of the time and place of a public hearing fails to appear at the hearing either in person or by appearance of counsel, the Hearing Commissioner shall enter the party's default on the record. Written notice of the entry of default and of the consequences shall be served upon the defaulting party within ten days of the entry of the default.~~

~~(b) Consequences of Default. If the party in default is the complainant, the Hearing Commissioner shall dismiss the complaint, for which there shall be no remedy other than a petition for removal of default. If the party in default is the respondent, the Hearing Commissioner shall conduct a default hearing on the date scheduled for the public hearing.~~

~~(c) Default Hearing. At a default hearing, the Hearing Commissioner shall receive any relevant evidence proffered by the complainant, shall decide liability, and, where appropriate, shall determine the amount of any damages or other relief to be ordered. After the default hearing, the Hearing Commissioner shall enter a final decision and order.~~

~~(d) Removal of Default. Within ten days of receipt of the notice of entry of the default, the party in default may petition the Hearing Commissioner to vacate the entry of default, remove the consequences of the default and reopen the case for good cause shown. The assertion of good cause of the party in default shall be in affidavit form under the pains and penalties of perjury. In any instance in which a case is reopened after entry of default, the party in default may be ordered to bear the reasonable costs incurred as a result of the default.~~

(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 shall 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, § 30A 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-determination~~post-probable cause motions and orders disposing of such motions at issue in the complaint for judicial review.

~~The record shall consist of either an electronic recording or a transcript of the hearing, as well as the exhibits in evidence including, if submitted, the certification to public hearing,~~

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~~complaint, stipulations, motions and the dispositions thereof. Testimony offered at a public hearing shall be either transcribed by stenographer retained by a party or parties or electronically recorded by the Commission, subject to the following provisions:~~

~~(e) If a party arranges to have a stenographer present at the public hearing, the Commission and the parties shall agree that the stenographic record shall be the official record of the proceedings and that the Commission shall not create an electronic recording.~~

~~(f) The party arranging for the stenographer shall furnish the Commission with a certified copy of the transcript within ten days of receipt of the transcript from the stenographer.~~

~~(g) In the case of an electronically recorded hearing, a party desiring a copy of the recording shall make a request in writing to the Clerk's Office in Boston~~Commission ~~and agree to pay the cost thereof.~~

~~(h) Any transcription of the electronic record made by a party subsequent to the hearing shall be filed with the Clerk's Office in Boston~~Commission ~~and may be cited if the Commission and all parties agree to accept the transcription as the official record. A party waives any objection to the accuracy of such transcript if not made within 20 days of its filing.~~

~~(11)~~(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.

~~(12)~~(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 ~~issues~~ claims certified to public hearing may be deemed irrelevant or not probative of the ~~issues~~ claims to be decided and, therefore, inadmissible.

~~(13)~~(14) Administrative Notice. The Commission ~~Hearing Commissioner~~ 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.

~~(14)~~(15) Oral Argument. The Commission ~~Hearing Commissioner~~ may allow a reasonable time to the parties for oral argument.

~~(15)~~(16) Post-Hearing Briefs~~ and Proposed Findings of Fact and Conclusions of Law~~. The parties, and any interested person ~~upon~~ recognized by the Commission ~~approval by the Hearing Commissioner,~~ shall file a post-hearing brief containing ~~Briefs and~~ proposed findings of fact and conclusions of law and other information as required by the Commission~~ by the Hearing Commissioner~~. The timing of the filing of the brief and ~~,~~ its page limit ~~, format and filing method~~ shall be determined by the Commission. ~~Hearing Commissioner~~. ~~and a proposed order may be filed by parties or by any interested person before or during the course of a hearing, or within such time thereafter as the Hearing Commissioner may designate. Any brief or proposed findings of fact and conclusions of law and proposed order shall be submitted in paper and electronic form, unless otherwise~~filed as ~~ordered by the Hearing Commissioner .~~

~~(16)~~(17) Other Post-Hearing Submissions. The Commission ~~Hearing Commissioner~~ may allow the parties, after a showing of good cause, to file additional evidentiary documents or exhibits within a reasonable time subsequent to the completion of the hearing. ~~If a request for such filing is granted, on or before the date set for filing, the requesting party shall send copies of all documents or exhibits to all other parties. If providing copies is impracticable, the~~ The Commission ~~Hearing Commissioner~~ may ~~, in the alternative,~~ allow reasonable inspection of ~~the~~ original documents or tangible things by all parties. The Commission ~~The Hearing Commissioner~~ may also require that the parties file additional evidentiary documents or exhibits, including stipulations concerning damages, subsequent to the completion of the hearing.

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~~(17)~~(18) Public Hearing Decision. ~~Finding and Order.~~ The Commission ~~Hearing Commissioner~~ 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 each and every claim ~~issue~~ certified to public hearing ~~or addressed at the 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. ~~, the attorneys of record., and the Attorney General.~~

~~(18)~~(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~~the Hearing Commissioner~~ 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 ~~average~~ fair market hourly rates ~~for~~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. ~~The Hearing Commissioner shall decide the matter.~~ 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 ~~on the merits~~ to the Full Commission of the underlying public hearing decision issued pursuant to 804 CMR 1.12(18). ~~, if any.~~ A ~~Hearing Commissioner~~ 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 ~~and Requests~~

(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-determination~~pre-probable cause requests for extensions of time, and ~~pre-determination~~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 ~~shall~~ may contain affidavits and other documents setting forth or evidencing facts on which a motion is based.

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

~~(b)~~

(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, and be typed in no less than 12-point type and 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.

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

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(3) Pre-~~determination~~Probable Cause Motions.

~~Motion Authority. Pre-probable causedetermination motions shall be decided by the Commission.~~

(a) Recognized Motions. ~~Predetermination motions slow the investigative process and interfere with the timely investigation of complaints. Accordingly, and a~~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~~determination~~ motions recognized by the Commission are limited to those enumerated herein, and are required where recognized. The following motions may be filed pre-~~determination~~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. ~~Predetermination~~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-~~determination~~probable cause motion to dismiss are limited to showing that:
   a. Claims are filed in court or are being investigated by another forum;
   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-~~determination~~Probable Cause Motions, Oppositions, ~~and~~ Replies, and Sur-Replies. All pre-~~determination~~probable cause motions, oppositions, ~~and~~ 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(2). 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. ~~Opposing parties shall serve on the moving party an original and a copy of the opposition, and serve a copy on every other party.~~ 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 ~~are strongly disfavored pre-determination and~~ 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-~~determination~~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-~~determination~~Probable Cause Motions.

~~Motion Authority. Motions filed post-determinationprobable cause at any time prior to certification of a complaint to public hearing shall be decided by the Chair. Motions filed after certification of a complaint to public hearing other than a motion for reconsideration of a probable cause determination shall be decided by the Hearing Commissioner.~~

~~(d)~~

~~(e)~~(a) Parties Required to Confer Prior to Filing. ~~When the parties are represented by counsel or counsel for the Commission is prosecuting the matter, p~~Prior to any post-~~determination~~probable cause motions 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.

~~(f)~~(b) Procedure for Serving and Filing Post-~~determination~~Probable Cause Motions, Oppositions, Replies, and Sur-Replies.

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1. Original Motion. ~~Where both parties are represented by counsel, t~~The moving party shall first serve a copy of the motion and the other supporting documents on every other party or counsel~~attorney~~, including counsel for the Commission who has entered an appearance.

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

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 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(5)(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 the attorney's name, address, telephone number and an email address.

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. M~~m~~ail, any time period identified in 804 CMR 1.13(~~5~~3) and (4) shall be increased by three days.

(c) Certificates of Service. The final page of every document served in accordance with 804~~3~~ CMR 1.13 shall contain a certificate of service noting the date of service and the manner in which service was made on every party. ~~The statement may be in the following form:~~

~~(g)~~

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

~~(i)~~

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

~~(j)~~

(e) Motions at Public Hearing. Motions made during the public hearing may be stated orally on the record. The Commission ~~Hearing Commissioner~~ may require oral or written supplementation if deemed necessary.

~~I hereby certify that a true copy of the above document was served upon (each party appearing pro se and) the attorney of record for each (other) party (and counsel for the Commission) (by hand) (by email) (by mail) on (date). (Signature.)~~

~~(2) Special Requirements/Exceptions from Filing Requirements.~~

~~(a) Pro Se Parties. When one or more parties are unrepresented, all parties are exempt from 804 CMR 1.13(5)(a) through (d) and the requirement to confer in advance of filing a motion as provided in 804 CMR 1.13(4). Pro se parties are encouraged to respond in writing to any motion they oppose, and shall:~~

~~1. Serve all motions, oppositions, replies and sur replies on opposing parties;~~

~~2. File oppositions within 14 days of service of the original motion;~~

~~3. Limit replies and sur replies to matters raised in the opposition; and~~

~~4. File replies within seven days of service of the opposition and sur replies within seven days of service of the reply.~~

~~(b) Predetermination Motions. Motions seeking an order from the Investigating Commissioner prior to the issuance of an investigative disposition shall be filed with the Investigator assigned to the matter.~~

~~1. Motions to amend a complaint pursuant to 804 CMR 1.04(9)(b) and motions for extensions of time pursuant to 804 CMR 1.17(2)(a) filed prior to an investigative disposition need not comply with 804 CMR 1.13(4) or (5)(a) through (d), except such motions shall be served upon any opposing party.~~

~~2. Motions for protective orders pursuant to 804 CMR 1.05(12) seeking to prevent disclosure to a party of information submitted during the investigation need not comply with 804 CMR 1.13(4) or (5)(a) through (d), except such motions shall be served upon any opposing party.~~

~~3. Generally, investigation of a complaint shall not be stayed pending the ruling on a motion. However, where the Commission's jurisdiction or authority to proceed is challenged by a motion filed with the Commission, the Investigating Commissioner may stay investigation of the merits of the charge pending a ruling on the motion.~~

~~(c) Post determination, Pre certification Motions. Motions to the Investigating Commissioner filed after an investigative disposition has issued, but prior to the certification to public hearing, shall be filed with the Clerk's Office.~~

~~(d) Post certification Motions. Motions seeking an order from the Hearing Commissioner following certification to public hearing shall be filed with the Clerk's Office in Boston.~~

~~(3)~~(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 ~~by the Hearing Commissioner~~ 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 ~~by the Hearing Commissioner or for any rulings made by the Investigating Commissioner or orders from the Commission or the Chair~~, except as provided in 804 CMR 1.15(54)(g). ~~Requests for relief addressed to the Full Commission shall be filed with the Clerk's Office in Boston.~~ An order of the Full Commission issued in accordance with 804 CMR 1.13(5~~10~~) 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. ~~by a Hearing Commissioner.~~ In the absence of new evidence proffered, motions for reconsideration of ~~an~~ such orders ~~by a Hearing Commissioner~~ shall be denied.

~~(4)~~(6) Emergency Motions.

(a) Motions for emergency relief shall contain a cover page bearing the heading "Emergency Motion" in large, bold type. ~~Such motions shall be filed with the Investigating Commissioner prior to issuance of an investigative disposition, and with the Clerk's Office in Boston thereafter.~~

(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, ~~counsel and attorneys of record including counsel for the Commission~~, simultaneous with the filing at the Commission. Such motions are exempt from 804 CMR 1.13(4~~5~~)(d).

(d) Emergency motions are exempt from 804 CMR 1.13(4)(c), although the Commission encourages all ~~counsel of record~~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, ~~books, records, correspondence~~ 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~~, Chair or Hearing Commissioner~~ may waive such fees upon a showing of economic hardship.

(e) Upon a showing of economic hardship, ~~and in the interest of justice~~ 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)(c) and (d), ~~and (5),~~ although it shall be served on all counsel ~~of record~~ including ~~for all other parties to the proceeding before the Commission including, but not limited to,~~ counsel for the Commission.

(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 served pursuant to 804 CMR 1.10(7) or 804 CMR 1.14(4).

(g) A party may not serve subpoenas pre-~~determination~~probable cause unless authorized by the Commission.

(h) A party may serve subpoenas post-~~determination~~probable cause once a discovery order has been issued. ~~by the Chair~~.

(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) Prior to Certification to Public Hearing. The Investigating CommissionerPre-determination, the Chair or the Commission may issue *subpoenas* relating to any matter under investigation or in question before them. Any party may move for the issuance of a *subpoena* from the Investigating CommissionerChair. The Investigating CommissionerChair may, through a discovery order, delegate the authority to issue *subpoenas* to counsel for the parties.~~

~~(3) Following Certification to Public Hearing. Following certification to public hearing, counsel for any party may issue *subpoenas* compelling the attendance and testimony of witnesses and the production of documents at public hearing. The *subpoena* shall identify the name and address of the party at whose request the *subpoena* was issued.~~

~~(4)~~(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(5)(a) through (d). The ~~Investigating CommissionerChair~~ Commission ~~or, in the event the complaint has been certified to public hearing, the Hearing Commissioner,~~ shall review the *subpoena* to determine whether it should be vacated or otherwise modified and issue an order ~~decision forthwith~~.

~~(5)~~(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 ~~counsel~~ 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(5), as well as appropriate sanctions under M.G.L. c. 151B, § 8.

1.15: Parties and ~~Counsel~~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.

~~(1)~~(2) Intervention. Any person or organization not originally a party to a complaint may move to intervene in a complaint post-~~determination~~probable cause, and shall be permitted to intervene, if, in the judgment of the Commission~~Commission~~~~Chair prior to certification to public hearing, or the Hearing Commissioner 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.

~~(2)~~(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 ~~pre-determinationprobable cause. Post-determinationprobable cause and before certification to public hearing, or in complaints initiated pursuant to 804 CMR 1.18, the Chair may take such action, and the Hearing Commissioner may take such action after certification to public hearing.~~ All parties shall be notified of any substitution, joinder or amendment.

~~(3)~~(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~~, for investigation, Post-determinationprobable cause and before certification to public hearing, or in complaints initiated pursuant to 804 CMR 1.18, the Chair may take such action. The Hearing Commissioner may take such action after certification to, conciliation or~~ public hearing.

~~(4)~~(5) Class Action.

(a) The ~~Investigating Commissioner~~~~Chair~~ 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.~~ or 3.~~ 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.

(b) A class action shall be maintained if the prerequisites of 804 CMR 1.15(5)~~(4)(a)~~ are met, and the ~~Investigating Commissioner~~~~Chair~~ 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 ~~Investigating Commissioner~~~~Chair~~ 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 ~~Investigating Commissioner~~~~Chair~~ Commission inadequate to fairly protect the interests of absent individuals who may be bound by any Commission order, the ~~Investigating Commissioner~~~~Chair~~ Commission may, at any time prior to entry of the order certifying the class, amend the complaint to eliminate any reference to

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representation of absent persons. The ~~Investigating Commissioner~~~~Chair~~ 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 ~~Investigating Commissioner~~~~Chair~~ 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(4).

(e) An authorized class action shall not be withdrawn or modified without the approval of the ~~Investigating Commissioner~~~~Chair~~ 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 ~~Investigating Commissioner~~~~Chair~~ Commission certifying a class action to the Full Commission. ~~pursuant to 804 CMR 1.13(10)(a).~~

~~(5)~~(6) Counsel Required following Probable Cause. Following a probable cause determination pursuant to 804 CMR 1.08(1)(f)1. ~~or 3.~~ 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 ~~Investigating Commissioner~~Commission in consideration of the public interest.

~~(6)~~(7) Private Representation. A complainant may have a private ~~counsel~~ 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.

~~(7)~~(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 ~~Investigating Commissioner~~~~Chair~~ Commission to withdraw from a case. In deciding whether to allow the withdrawal of an attorney, the ~~Investigating Commissioner~~~~Chair's~~ 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(7)(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.

~~(8)~~(9) Enforcement by Private Counsel. The Commission may grant a request ~~n *ex parte* motion~~ 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.

~~(9)~~(10) Attorney Signature.

(a) Every pleading, motion or document filed by a party represented by counsel shall be signed by counsel. ~~at least one attorney of record~~. The address of each attorney, telephone number, business email address, and Bar Registration Number shall be stated.

~~motion or document submitted~~ filed ~~by a party represented by counsel shall be signed by at least one attorney of record, in the individual attorney's name and shall include the attorney's address, electronic mail address and Board of Bar Overseers or Bar Registration number.~~

(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 ~~submitted~~ 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 ~~submitted~~ 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 ~~Investigating CommissionerChair or, a Hearing Commissioner assigned to the case~~ 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)~~(11) Attorney Notice of Appearance and *Pro Hac Vice* Notice. Any attorney~~s~~ representing a client~~s~~ in a complaint filed with ~~at~~ 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.

~~(11)~~(12) Limited Exception to Attorney *Pro Hac Vice* Admission. Pre-~~determination~~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 ~~representative~~ without being admitted *pro hac vice*. After the issuance of a ~~causal~~ determination under 804 CMR 1.08(1)(f)2., 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.

~~(12)~~(13) Appearance by a ~~DAR~~Duly Authorized Representative. A party shall have exclusive control over the appearance of a ~~DAR~~duly authorized representative and may authorize or revoke representation by a ~~DAR~~duly authorized representative at any time. A party who wishes to authorize or revoke representation of a ~~DAR~~duly authorized representative shall do so in writing either through the MCAD Case Portal or through alternative means if allowed under 804 CMR 1.15(13), except that authorization shall be via the MCAD Case Portal in all instances where a ~~DAR~~duly authorized representative assists with the filing of the complaint pursuant to 804 CMR 1.04(2)(a)1.

(14) Scope of ~~DAR~~Duly Authorized Representation. In accordance with the prohibition against the practice of law by non-attorneys, ~~DAR~~duly authorized representation is not allowed after a probable cause disposition.

(15) Use of the MCAD Case Portal by Representatives.

(a) Attorneys who are members of the bar in good standing in any U.S. jurisdiction representing parties before the Commission are required to register for and use the MCAD Case Portal for all filings with the Commission, including the filing of the complaint. The MCAD Case Portal shall be the sole means of case access for all

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attorneys representing parties before the Commission, and the primary avenue for communication with the Commission.

(b) Duly ~~A~~authorized ~~R~~representatives representing parties before the Commission who are authorized in accordance with 804 CMR 1.15(13) are required to register for and use the MCAD Case Portal for all filings with the Commission except for the filing of the complaint, as provided for in 804 CMR 1.04(2)(a)1. The MCAD Case Portal shall be the sole means of case access for all ~~D~~duly ~~A~~authorized ~~R~~representatives representing parties before the Commission, and the primary avenue for communication with the Commission.

~~(13)~~(16) Use of the MCAD Case Portal by *Pro Se* Parties. *Pro se* parties are required to register for and use the MCAD Case Portal for all filings with the Commission absent good cause, although they may file a complaint by U.S. Mail or otherwise as provided for in 804 CMR 1.04(2)(a). Absent good cause, the MCAD Case Portal shall be the sole means of case access for *pro se* parties, and the primary avenue for communication with the Commission. Good cause to use alternative means for filing, case access and communication with the Commission may be demonstrated in a request for reasonable accommodation for disability or by demonstrating a compelling inability to access or use the MCAD Case Portal that is unrelated to disability. If the Commission finds good cause for allowing alternative means of case access for a *pro se* party, the Commission shall provide notice to all parties.

1.16: Service and Notice ~~by the Commission~~

(1) Service by the Commission.

~~(a)~~ Manner of Service. The Commission may serve any document, including the complaint,

~~(b)~~

(a) ~~In the absence of a specific rule of service in 804 CMR 1.00, the Commission may serve any paper~~ 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 e~~lectronic~~ mail.

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

1. A party who is a registered user of the MCAD Case Portal responds to the Commission through the MCAD Case Portal in response to the complaint after service by any means;
2. A party registers as a user in the MCAD Case Portal in response to the complaint after service by any means;
3. An attorney for a party enters an appearance through the MCAD Case Portal in response to the complaint after service by any means; or
4. Service is via personal service.

(2) Service by the Parties. Any service obligation in 804 CMR 1.00 is met by filing a document through the MCAD Case Portal as to every party and representative who is a registered user of the MCAD Case Portal and a certificate of service is not required, subject to the following exceptions:

(a) Where service of motions, oppositions, replies, and sur-replies on opposing parties is required prior to filing a motion package under 804 CMR 1.13, the parties shall serve those documents in accordance with 804 CMR 1.13.

(b) Service of discovery documents pursuant to 804 CMR 1.10 shall not be through the MCAD Case Portal, except for notices of non-party subpoenas filed under 804 CMR 1.14(1)(f), and every document served shall contain a certificate of service noting the date of service and the manner in which service was made on the party.

(c) When the Commission has authorized a party to use alternative means of filing and case access pursuant to 804 CMR 1.15(14), service on that party shall conform to the order of the Commission allowing the alternative means, and the final page of every document served shall contain a certificate of service noting the date of service and the manner in which service was made on the party.

~~(2)~~(3) 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

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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, and accessing the MCAD Case Portal shall serve as proof of notice of that which is available to the party in the MCAD Case Portal as of the time of access. If a party does not register or participate as a user in the MCAD Case Portal after proper service, 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.

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-~~determination~~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 ~~Investigating Commissioner~~Commission and state the extension of time being requested and the reason(s) for the extension. ~~Pursuant to 804 CMR 1.13(9)(b)1., extension requests are exempt from motion practice and conference requirements.~~

(b) ~~Post-determination~~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.

~~(c)~~(d) The Commission ~~The Chair~~ 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 parties 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~~30~~ 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 parties. The investigative conference shall result in one of the following outcomes:

1. The ~~Investigating Commissioner~~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~~Investigating Commissioner~~, and is not subject to preliminary ~~hearing~~ 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 ~~Chair~~ ~~Investigating Commissioner~~ may determine that probable cause exists for crediting the allegations of the complaint, in which case the Commission ~~Investigating Commissioner~~ shall immediately endeavor to eliminate the unlawful practice complained of by conference, conciliation and persuasion.

If the Commission~~Chair~~ ~~Investigating Commissioner~~ finds probable cause to credit the allegations of any housing complaint~~, including those dual filed with HUD~~, the Commission ~~Chair~~ ~~Investigating Commissioner~~ 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.

(3) Certification to Public Hearing.

(a) The Commission ~~Chair~~ ~~Investigating Commissioner~~ may certify the ~~issues~~ 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 ~~Chair~~ ~~Investigating Commissioner~~ shall serve a written notice requiring respondent to answer the charges of the complaint 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 complaint shall be presented before the Commission by counsel for the Commission. ~~the Hearing Commissioner by the Investigating Commissioner~~~~Commission~~.

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

~~(d) Public hearings shall be heard by a Hearing Commissioner, who shall not be the Commissioner who previously investigated the matter and issued the complaint.~~

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

1.19: Emergency Proceedings

(1) General Provisions.

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

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

(c) 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

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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):

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

(b) ~~Post-determination~~Post-probable cause. 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-determination~~post-probable cause record of all docketed proceedings, filings, orders, and notices ~~administrative record, which~~ 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. ~~Post-determination~~Post-probable cause the investigative file shall be available to the parties ~~Upon request to the Records Access Officer post-determination, the parties to a complaint shall be allowed access to the investigative file,~~ 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 ~~counsel~~ 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 in 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.

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(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 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 ~~counsel~~representatives. The Commission shall not review each filing for compliance with 804 CMR 1.21(4). ~~The p~~Parties and ~~counsel~~ 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 directives or orders by Commissioners or Commission staff;
(b) Abusive, disruptive, or harassing behavior towards other parties, representatives, Commissioners, or Commission staff;
(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.
~~(1)~~ Sanction Types. Sanctions, may include but are not limited to:
(2)
~~(a)~~
(a) ~~Failure by any participant in Commission investigations and proceedings to comply with Commission orders, requirements or procedures may result in the imposition of sanctions against a participant or counsel, which may include without limitation~~ T~~t~~he 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 ~~D~~duly ~~A~~authorized ~~R~~representation authorization;
(e) Denial of access to the MCAD Case Portal;
(f) Written reprimands;
(g) Limitations on communications with Commission staff, or
(h) ~~as well as i~~Investigative default against a respondent pursuant to 804 CMR 1.07.
(3) Sanction Orders and Written Reprimands. An order is required prior to imposing any sanction in 804 CMR 1.22 which shall address the grounds and the timeframe for the sanction imposed. At least one written reprimand is required prior to issuing any sanction order under 804 CMR 1.22(1)(b) unless the complainant had a complaint administratively dismissed within the previous year for the same or similar conduct or the conduct involves actual or threatened physical harm to any party, representative, Commission staff member or other person involved in the processing of the complaint.
~~(2) Sanction Authority. Sanctions may be imposed by the Commission, the Chair, a Hearing Commissioner, and the Full Commission.~~

1.23: Full Commission Review

(1) Review of a Public Hearing Decision ~~of a Hearing Commissioner~~.
(a) Time Period for Request. Any party aggrieved by a final public hearing decision ~~of a Hearing Commissioner~~ may, within ten days of receipt of the decision, file a notice of appeal with the Clerk's Office. ~~in Boston~~.

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(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 ~~in Boston~~ setting forth:

1. A statement of the ~~issues~~ 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 ~~of the Hearing Commissioner~~ 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 ~~proceeding before the Hearing Commissioner~~ 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. The text shall be double spaced, and typeface shall be 12-point or larger size and not exceed 10.5 characters per inch. The margins shall be at least one inch.

(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 ~~may~~ 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 ~~the~~ decision ~~of the Hearing Commissioner~~ shall operate as a stay of execution of the public hearing decision ~~Order of the Hearing Commissioner~~, unless ordered otherwise by the Full Commission.

(6) Full Commission Members. Commissioners who have presided over a matter post-probable cause ~~The Investigating Commissioner Chair~~ 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. ~~, or in cases in which the Chair was the Hearing Commissioner. The Hearing Commissioner but not any designee shall participate in the review of their decision unless such participation is impracticable~~.

(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

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the additional evidence is material to the ~~issues~~ claims in the case, and that there was good reason for failure to present it at ~~in the~~public hearing ~~proceeding before the Hearing Commissioner,~~ the Full Commission may order that the additional evidence be taken after remand ~~before the Hearing Commissioner~~ 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 of the ~~Investigating Commissioner~~~~Chair~~ certifying the ~~issues~~ claims to public hearing.

(11) Commission Initiated Review of Public Hearing Decisions. The Full Commission may review the final public hearing decision ~~of a Hearing Commissioner~~ *sua sponte*. In addition, a Commissioner who presided over the matter post-probable cause the ~~Investigating Commissioner~~~~Chair~~, 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 and a supporting affidavit.~~;~~ The petition shall also include information about average hourly rates for attorneys with similar experience, 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);
(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) Definition of 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

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(1) Definition of Final Commission Order. Where no party files a timely appeal to the Full Commission, the ~~hearing~~ public hearing decision ~~of the Hearing Commissioner~~ 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 ~~of the Hearing Commissioner~~ 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 decision and 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 ~~counsel~~ an attorney for the party aggrieved by the alleged violation 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 provided for in 804 CMR 1.09(5).

(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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