

CIVIL RIGHTS COMMISSION[161]

Notice of Intended Action

**Proposing rulemaking related to complaints
and providing an opportunity for public comment**

The Civil Rights Commission hereby proposes to rescind Chapter 3, “Complaint Process,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Executive Order 10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 216.

Purpose and Summary

The purpose of proposed Chapter 3 is to implement the Iowa Civil Rights Act by providing parameters and expectations regarding the complaint process for discrimination complaints.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 161—Chapter 15.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Commission no later than 4:30 p.m. on January 16, 2024. Comments should be directed to:

Jacob Bennington
Iowa Civil Rights Commission
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.281.4482
Email: jacob.bennington@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 16, 2024
10 a.m.

6200 Park Avenue, Suite 100
Des Moines, Iowa

February 16, 2024
10 a.m.

6200 Park Avenue, Suite 100
Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Commission and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 161—Chapter 3 and adopt the following **new** chapter in lieu thereof:

CHAPTER 3
COMPLAINT PROCESS

161—3.1(216) Initiation of complaint.

3.1(1) Contents of complaint. Each complaint should contain the following:

- a. The full name, address, and phone number of the person making the charge;
- b. The full name and address of each respondent;
- c. A clear and concise statement of the facts constituting each alleged discriminatory practice, including pertinent dates, where known;
- d. Where employment discrimination is alleged, the approximate number of respondent's employees.

3.1(2) Technical defects in complaint. A complaint is sufficient when it includes a written statement that identifies the parties and generally describes the alleged discriminatory actions or practices. Complaints may be amended to cure technical defects or omissions including verification. Such amendments will relate back to the date the complaint was filed.

161—3.2(216) Timely filing of the complaint.

3.2(1) All alleged continuous violations that constitute a pattern or practice are timely if the most recent act occurred within 300 days of filing the complaint.

3.2(2) The 300-day filing period is subject to waiver, estoppel, and equitable tolling. Equitable tolling depends upon the facts and circumstances of the case and suspends the running of the filing period for as long as the grounds for tolling exist.

161—3.3(216) Jurisdictional review. Upon receipt of a submitted complaint form, the executive director or designee shall review the form to determine whether the commission has jurisdiction. A no jurisdiction determination constitutes a final agency action for purposes of judicial review.

161—3.4(216) Amendment process.

3.4(1) Amendment of complaint.

- a. Complaints or any part thereof may be amended by the complainant or commission prior to the contested case hearing. Complaints may be amended to include additional allegations discovered during investigation. The issues at the contested case hearing shall include facts uncovered during investigation and are not limited to the allegations in the original complaint.

b. Amendments alleging additional discriminatory acts or practices that do not relate back to the original complaint will only be permitted if the amended complaint could have been filed as a timely complaint on the date the amended complaint was filed.

c. At the contested case hearing, the administrative law judge may amend the complaint at the administrative law judge's discretion. Where an amendment is made, the administrative law judge may grant the respondent a continuance if needed to prepare to defend the amended charge.

3.4(2) Amendments adding successor respondents. The complainant or the commission may at any time amend a complaint to add an alleged successor as a respondent. If a successor is added after issuance of the notice of hearing, the administrative law judge may grant a continuance to allow the successor to prepare its defense.

161—3.5(216) Notice of the complaint. Within 20 days after jurisdiction is established, the commission will serve a copy of the complaint upon the respondent by mail or electronic mail. In the absence of a response from the first named respondent within 90 days, the commission shall serve the complaint on the first named respondent by certified mail within 20 days and inform the complainant by letter of the acknowledgment of the right to withdraw the complaint or to request an administrative release to commence the complainant's own action in Iowa district court in accordance with Iowa Code section 216.16.

161—3.6(216) Preservation of records.

3.6(1) Duty to preserve. When a complaint has been served on a respondent, the respondent shall preserve all records relevant to the investigation until the complaint is finally adjudicated, including but not limited to:

a. Any books, papers, documents, applications, forms, or records of any form that are relevant to the scope of the investigation.

b. Records relating to other employees, applicants, or members holding or seeking positions similar to that held or sought by the complainant.

c. Records relating to other applicants for the same position or membership as the complainant.

3.6(2) Failure to preserve. At a contested hearing, the administrative law judge may determine that a party or agent of the party destroyed evidence relevant to the investigation. The administrative law judge may determine that the destroyed evidence was adverse to the party or agent who destroyed the evidence. The administrative law judge shall determine whether the destruction was done at a time when the party knew or should have known that the evidence destroyed was relevant to the investigation and whether the explanation for the destruction is unsatisfactory.

161—3.7 to 3.11 Reserved.

161—3.12(216) Mediation. Mediation is available to all parties irrespective of representation by counsel. Mediation may encompass all issues in the case that could be investigated. If the parties agree to seek and obtain a global settlement not limited to a resolution of the civil rights issues, the mediation may be expanded to include these collateral claims.

161—3.13 Reserved.

161—3.14(216) Document submission process.

3.14(1) Methods of filing. Any document, including a complaint of discrimination, may be filed by any one of the following methods:

a. By in-person delivery to the commission office during set office hours.

b. By regular or certified mail.

c. By fax. For fax transmissions, the sender may be billed a reasonable fee for each page in excess of five pages.

d. By electronic mail to the commission-established email address.

3.14(2) Date of filing. The date on which any document is deemed to be filed with the commission is determined according to the following:

- a.* Any document received by in-person delivery will be filed as of the date of in-person delivery.
- b.* Any document received by U.S. mail will be filed as of the mailing date pursuant to subrule 3.14(3).
- c.* Any document received by fax will be filed as of the date shown on the face of the fax.
- d.* Any document received by electronic mail will be filed as of the date received.

3.14(3) Proof of mailing. Proof of mailing includes a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form: “The undersigned certifies under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Iowa Civil Rights Commission, 400 E. 14th Street, Des Moines, Iowa 50319, and to the names and addresses of the persons listed below by depositing a copy thereof (in a United States post office mailbox with correct postage properly affixed or state interoffice mail). (Date) (Signature).”

3.14(4) Conflict among proofs of mailing. The date of mailing is the date shown by the postmark. In the absence of a legible postmark, the date of mailing is the date shown by the postage meter mark. In the absence of both a legible postmark and a legible postage meter mark, the date of mailing is the date shown by the affidavit, certificate, or certification of mailing.

161—3.15 to 3.25 Reserved.

161—3.26(216) Initial investigation of complaint—tier one investigation.

3.26(1) Questionnaire. After receipt of a complaint, the commission may mail to the parties written questionnaires. The complainant and respondent may provide responses in person, by mail, or by electronic mail.

3.26(2) Responses to the questionnaire.

a. Questionnaire responses can include written position statements. Questionnaire responses must be accompanied by supportive evidence. Attorney arguments are not considered admissible evidence. Supportive evidence should reflect how the complainant was treated and how individuals similarly situated to the complainant were treated.

b. Questionnaire responses are due 30 days from the mailing of the questionnaire. One oral or written request for an extension of 30 days or less will be granted on an informal basis without notice to the nonrequesting party. A party may assume the 30-day extension request is approved, unless otherwise notified. Any further request for extension may be subject to review by the executive director or designee and will be granted upon a showing of extenuating circumstances.

3.26(3) Failure to respond.

a. Complainant. A complaint may be administratively closed if a complainant fails to respond to questionnaires.

b. Respondent. A complaint may proceed to further investigation if the respondent fails to submit questionnaire responses with supportive evidence.

3.26(4) Suggested procedure in answering questionnaires will be provided in the cover letter of the questionnaires.

3.26(5) The tier one investigation process will determine whether further investigation is needed. If further investigation is not warranted, the complaint will be administratively closed. Further processing is warranted when the submitted information indicates a reasonable possibility of a probable cause determination or the legal issues in the complaint need development.

3.26(6) An administrative closure resulting from the preliminary screening determination is an evaluation of the probable merits of the case.

3.26(7) The commission may issue an investigation information request (IIR) after the issuance of the preliminary case report.

161—3.27 to 3.31 Reserved.

161—3.32(216) Secondary investigative process—tier two investigation.

3.32(1) After a preliminary screening determination concludes further investigation is warranted, the complaint shall be referred to designated staff for further investigation of the allegations of illegal discrimination, known as a tier two investigation.

3.32(2) Staff shall review any documents submitted in response to an initial information request and any other documentation submitted by the parties prior to the initiation of the tier two investigation.

3.32(3) At the discretion of the investigator, further steps may be taken, including party or witness interviews or the issuance of additional information requests or subpoenas.

161—3.33(216) Conclusion of investigation. Following the conclusion of a tier two investigation, staff may issue an investigative analysis (IA). The IA will result in one of the following:

1. An investigative closure,
2. A probable cause or no probable cause recommendation to an administrative law judge, or
3. A no jurisdiction determination.

161—3.34 and 3.35 Reserved.

161—3.36(216) Protective orders. The executive director or designee shall have the authority to issue protective orders in case files when necessary.

161—3.37(216) Investigative subpoenas.

3.37(1) Application of rule. This rule applies to subpoenas served before a notice of contested case hearing pursuant to rule 161—4.2(17A).

3.37(2) Prior to notice of hearing. Subpoenas may be issued by the executive director or designee before a notice of a contested case hearing. Only the commission has the right to demand issuance of a subpoena.

3.37(3) Timing before subpoena is issued. Where a person fails to provide requested information pursuant to the initial information request or subsequent information requests, a subpoena may be issued. A subpoena may be issued not less than seven days after the initial information request or subsequent information requests have been delivered to the person having possession, custody, or control of the requested materials.

3.37(4) Contents of subpoena. Every subpoena shall state the name of the commission and the purpose for which the subpoena is issued. The subpoena shall be directed to a specific person, or the person's attorney, or an officer, partner, or managing agent of any entity that is not a natural person. The subpoena for the unknown person having possession, custody, or control of the requested material or real evidence may be directed to the "custodian of records." The subpoena shall command the person to whom it is directed to produce designated books, papers, or other real evidence in the possession, custody, or control of that person at a specified time and place.

3.37(5) Method and proof of service. Personal service will be accomplished pursuant to Iowa Rule of Civil Procedure 1.1701(3). Proof of service is by acknowledgment of receipt by the person served or by the affidavit of the person who served the subpoena. Failure to file proof of service does not affect the validity of service.

3.37(6) Objections to subpoena.

a. An individual who intends not to comply with any part of a subpoena shall promptly petition the executive director to revoke or modify the subpoena. The petition shall separately identify each portion of the subpoena and provide the grounds upon which the petitioner does not intend to comply. A copy of the subpoena shall be attached to the petition. The commission shall mail the final determination of the petition by the executive director or designee to the petitioner.

b. The grounds for subpoena modification or revocation are met if the subpoena is:

- (1) Not within the statutory authority of the commission;
- (2) Not reasonably specific;
- (3) Unduly burdensome; or

(4) Not reasonably relevant to matters under investigation.

c. A petition to revoke or modify a subpoena should be captioned “Motion to Quash” or “Petition to Modify/Revoke Subpoena” and include the commission case number.

3.37(7) *Failure to comply.* If an individual fails to comply with a subpoena, the executive director or designee may authorize the filing of a petition for enforcement in the district court.

3.37(8) *Open public records law.* The status of a record as a confidential public record under Iowa Code chapter 22 does not affect the authority of the commission to subpoena and compel the production of that record.

161—3.38(216) Postinvestigation determination.

3.38(1) If a case file is sent to an administrative law judge for determination, all parties will be notified of the determination in writing by mail.

3.38(2) Where the administrative law judge rejects the recommendation of the commission staff, the reasons shall be stated in writing and included in the case file.

161—3.39(216) Post-probable cause process.

3.39(1) If the administrative law judge makes a probable cause determination, a staff member shall be assigned to attempt resolution of the case through conciliation. All parties shall be notified of the time and date of any conciliation.

3.39(2) The commission will work with the complainant or complainant’s attorney to formulate an initial offer. The 30-day conciliation period begins when the offer of settlement is communicated to the respondent or respondent’s attorney.

3.39(3) The conciliation agreement is effective only after the agreement has been signed by all parties and a commissioner, the executive director, or a designee on behalf of the commission. A copy of the agreement shall be mailed to all parties.

3.39(4) To ensure compliance with a conciliation agreement, the commission shall take appropriate action to ensure compliance, including the filing of an action in district court seeking specific performance of the terms of the conciliation agreement or other remedies that may be available.

3.39(5) A respondent may not request reconsideration of a finding of probable cause.

161—3.40 to 3.42 Reserved.

161—3.43(216) Alternatives to commission process—administrative release/right to sue.

3.43(1) *Issuance of right to sue letter.* For a right to sue letter to be issued, the request must be filed in writing by the complainant or the complainant’s attorney and include the corresponding state and federal case numbers. After a right to sue letter has been issued, the case shall be administratively closed.

3.43(2) *Exceptions to issuance of right to sue.* A right to sue letter will not be issued where the complaint was not timely filed or the commission has determined the complaint is not jurisdictional.

3.43(3) *Erroneous right to sue.* If the right to sue letter was issued erroneously, the right to sue letter will be deemed void and the case file reopened if the error is discovered within 90 days after issuance.

161—3.44 and 3.45 Reserved.

161—3.46(216) Withdrawal process.

3.46(1) *Withdrawal of complaint.* A complainant may withdraw any part of a complaint prior to notice of a contested case hearing. After notice of a contested hearing, a complainant may only withdraw a complaint or any part of a complaint at the commission’s discretion. The commission may continue investigating where deemed in the public interest.

3.46(2) *Reopening of a withdrawn complaint.* A complainant may request that the complainant’s withdrawn complaint be reopened within 90 days after closure only if the commission finds that the request for withdrawal was either not filed voluntarily or was filed as a result of a mistake concerning the effect of the request for withdrawal.

3.46(3) *Withdrawal as a term of settlement.* If the withdrawal is filed pursuant to a conciliation, mediation, or other settlement agreement, the complainant shall seek redress in district court. If the district court determines that the settlement agreement is invalid, the commission may reopen the case file.

161—3.47(216) Periodic review and administrative closure.

3.47(1) *Periodic evaluation of evidence.* The executive director or designee may periodically review the complaint to determine whether further processing is warranted. When the periodic review occurs prior to the determination of probable cause, then the tier one investigative standard in subrule 3.26(5) applies. A complaint determined to not warrant further processing shall be administratively closed.

3.47(2) *Uncooperative complainant.* A case file may be administratively closed at any time if the complainant cannot be contacted after diligent efforts or is uncooperative, causing unreasonable delay in the processing of the complaint.

3.47(3) *Involuntary satisfactory adjustment.* A case file may be closed as satisfactorily adjusted when the respondent has made an offer of settlement acceptable to the executive director or designee but not to the complainant. Notice of intended closure shall state reasons for closure and be mailed to the complainant. The complainant is allowed 30 days to provide written reasons why the case file should remain open. The executive director or designee will review the response and notify the complainant of the decision.

3.47(4) *Frivolous complaints.* Following jurisdictional review, the executive director or designee may determine that a complaint is frivolous and does not warrant further processing. The executive director or designee shall only make this determination in rare circumstances and will provide notice to the chairperson of the commission regarding each case file closed pursuant to this subrule. If a case file is closed pursuant to this subrule, the complainant is eligible to request a right to sue letter pursuant to the terms of Iowa Code section 216.16 and these rules. Consideration of a frivolous complaint may include the number of previous nonmeritorious complaints filed by the complainant within the previous year.

3.47(5) *Litigation review.* The complaint may be administratively closed after a probable cause determination has been made when it is determined that the record does not justify proceeding to a public hearing. A complainant may not request to reopen the complainant's case file when the file was administratively closed following litigation review.

161—3.48 and 3.49 Reserved.

161—3.50(216) Procedure to reopen.

3.50(1) *Request for reopening of case file within 30 days.*

a. Within 30 days following the notice of the conclusion of the investigation, a party can file an intra-agency appeal. The party shall state the reasons in writing for appeal and submit any additional documentation. Within 30 days of the intra-agency appeal, the director or designee shall review the appeal. The executive director shall affirm, modify, reverse, or remand. If the case file is remanded, the executive director or designee shall transfer the case file to investigative staff for further processing.

b. The commission shall notify all parties upon receipt of any intra-agency appeal. All parties shall have 14 days to provide any response to the appeal for the executive director's or designee's consideration.

3.50(2) *Reopening of an administratively closed case file after 30 days.*

a. The commission may reopen a case file at any time a right to sue letter could have been issued under Iowa Code section 216.16(3) "a," unless otherwise provided in these rules, and where the closure was affected by any of the following:

(1) False, fraudulent, or material misrepresentation of information provided to the commission concerning a material issue in the case file by the respondent, a witness, or some other person not the complainant; or

(2) Error by the commission staff.

b. The executive director or designee shall consider the information discovered under subparagraphs 3.50(2) “a”(1) and 3.50(2) “a”(2) and determine whether the complaint requires further action.

c. If it is determined that further action is necessary, the parties or their attorneys shall be notified of the reopening of the case file. If requested by the commission, the parties shall have 30 days to submit their written positions regarding the alleged new information.

3.50(3) *No probable cause determination reopening.* The commission may reopen a case file within one year of a no probable cause determination where the determination was affected by any of the following:

- a. Fraud perpetrated upon the commission by some person who is not the complainant; or
- b. Material misrepresentations.

3.50(4) *Reopening from breach of settlement agreement.*

a. If a party breaches a settlement agreement, the aggrieved party may seek redress with the commission or in district court.

b. If the aggrieved party seeks commission engagement, that party has 90 days from the time of an alleged breach of a settlement agreement to request the case file be reopened to continue the investigative process, but only if all the following apply:

- (1) The commission is not a party to the settlement agreement;
- (2) The requesting party agrees the settlement agreement is null and void; and
- (3) The requesting party waives and releases any rights to seek specific performance or damages for the alleged breach in district court.

c. All parties shall be notified that a request for reopening has been made. A copy of the request for reopening shall be provided to all parties. The parties shall be afforded no less than 14 days and no more than 30 days to submit their written position and any supporting documents regarding the request.

The executive director or designee shall determine whether the agreement has been breached or the nonrequesting party failed to negotiate the agreement in good faith. If it is determined that a material breach occurred, the parties or their attorneys shall be notified of the reopening of the case file and the case file will be referred for further processing.

161—3.51 to 3.55 Reserved.

161—3.56(216) Access to file information.

3.56(1) Disclosure of the existence or contents of a case file is prohibited except in the following circumstances:

a. Upon filing an appeal in district court of a final action, parties and their attorneys may access their case file.

b. When a case has been set for a contested case hearing and notice has been mailed, parties and their attorneys may access their case file through discovery pursuant to rule 161—4.7(17A).

c. Parties and their attorneys may access the case file upon appeal of a decision rendered by the commission in a contested case. The introduction of documents into evidence from a case file during a contested case hearing does not waive the confidentiality of other documents within that case file.

3.56(2) Attorneys seeking access to case files must provide written notification of representation.

161—3.57(216) Miscellaneous.

3.57(1) *Conflicts prohibited.* The administrative law judge designated to issue a determination will not serve as administrative law judge in the contested case hearing for the same case file.

3.57(2) *Injunctions.* If the executive director or designee determines that a complainant may be irreparably injured before a contested case hearing, the executive director or designee may direct an attorney for the commission to seek appropriate injunctive relief to preserve the rights of the complainant and the public interest.

These rules are intended to implement Iowa Code chapter 216.