

CHAPTER 3
COMPLAINT PROCESS

[Prior to 1/13/88, see Civil Rights 240—1.3 to 1.7, 1.16, 1.17]

Chapter rescission date pursuant to Iowa Code section 17A.7: 9/25/29

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.

[ARC 8198C, IAB 8/21/24, effective 9/25/24]

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.

[ARC 8198C, IAB 8/21/24, effective 9/25/24]

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 agency has jurisdiction. A no jurisdiction determination constitutes a final agency action for purposes of judicial review.

[ARC 8198C, IAB 8/21/24, effective 9/25/24]

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 agency 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 do not relate back to the original complaint. These amendments 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 their 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 agency 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.

[ARC 8198C, IAB 8/21/24, effective 9/25/24]

161—3.5(216) Notice of the complaint. After jurisdiction is established, the agency will serve a copy of the complaint upon the respondent within 20 days by mail or electronic mail. In the absence of a response from the first named respondent within 90 days, the agency shall serve the complaint on the first-named

respondent by certified mail within 20 days and inform complainant by letter of 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.

[ARC 8198C, IAB 8/21/24, effective 9/25/24]

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 the complainant, 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 a party or agent of the party destroyed evidence relevant to the investigation. The administrative law judge may infer that the destroyed evidence was adverse to the party who destroyed the evidence or whose agent destroyed the evidence. The administrative law judge shall determine whether the destruction was done at a time when the party or agent knew or should have known that the evidence destroyed was relevant to the investigation and whether the explanation for the destruction is unsatisfactory.

[ARC 8198C, IAB 8/21/24, effective 9/25/24]

161—3.7 to 3.11 Reserved.

161—3.12(216) Mediation. Mediation is a free service offered by the agency. 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.

[ARC 8198C, IAB 8/21/24, effective 9/25/24]

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 agency 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 agency-established electronic mail address.

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

a. On 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 either 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 Office of Civil Rights, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321, 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.

[ARC 8198C, IAB 8/21/24, effective 9/25/24]

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 agency may mail to the parties written questionnaires. Complainant and respondent may provide responses in person, by mail or 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 address the complainant's allegations 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 extension of 30 days or less will be granted on an informal basis without notice to the non-requesting party. A party may assume the first 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 respondent fails to submit questionnaire responses with supportive evidence.

3.26(4) Suggested procedure in answering questionnaires will be provided in the cover letter to 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. Respondent's failure to respond to the agency's request for response may also result in referral to a tier two investigation.

3.26(6) The agency may issue a request for information for the investigation after the issuance of the tier one determination.

[ARC 8198C, IAB 8/21/24, effective 9/25/24]

161—3.27 to 3.31 Reserved.

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

3.32(1) After a tier one 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 a request for information 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.

[ARC 8198C, IAB 8/21/24, effective 9/25/24]

161—3.33(216) Conclusion of investigation. Following the conclusion of a tier two investigation, staff may issue an investigative report that may include findings of fact and legal analysis. The report will result in one or more 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.
[ARC 8198C, IAB 8/21/24, effective 9/25/24]

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.

[ARC 8198C, IAB 8/21/24, effective 9/25/24]

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 agency 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 agency and the purpose for which the subpoena is issued. The subpoena shall be directed to a specific person; 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 agency 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 agency;
- (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 agency 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 agency to subpoena and compel the production of that record.

[ARC 8198C, IAB 8/21/24, effective 9/25/24]

161—3.38(216) Postinvestigation determination.

3.38(1) If a case file is sent to an administrative law judge for a probable cause or no probable cause determination, all parties will be notified of the outcome by written order. The agency will mail the order to all parties.

3.38(2) Where the administrative law judge rejects the recommendation of agency staff, the reasons shall be stated in the order.

[ARC 8198C, IAB 8/21/24, effective 9/25/24]

161—3.39(216) Postprobable 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 agency 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 the executive director or designee on behalf of the agency. A copy of the agreement shall be mailed to all parties.

3.39(4) To ensure compliance with a conciliation agreement, the agency 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.

[ARC 8198C, IAB 8/21/24, effective 9/25/24]

161—3.40 to 3.42 Reserved.

161—3.43(216) Alternatives to agency 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 submitted 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 agency 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.

[ARC 8198C, IAB 8/21/24, effective 9/25/24]

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 administrative law judge's discretion. The agency may continue investigating where deemed in the public interest.

3.46(2) *Reopening of a withdrawn complaint.* A complainant may request their withdrawn complaint be reopened within 90 days after closure, only if the agency 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 is barred from applying for reopening on the ground the agreement was not voluntary, unless the district court has first determined the settlement agreement is invalid.

[ARC 8198C, IAB 8/21/24, effective 9/25/24]

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 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 the 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 may determine a complaint is frivolous and does not warrant further processing. The executive director shall only make this determination in rare circumstances and shall report the number of occurrences in the annual report. If a case file is closed pursuant to this subrule, the complainant may request a right-to-sue letter pursuant to the terms of Iowa Code section 216.16 and these rules. This rule does not apply to complaints that are eligible for cross-filing with the Department of Housing and Urban Development.

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 their case file when the file was administratively closed following litigation review.

[ARC 8198C, IAB 8/21/24, effective 9/25/24]

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.

b. The agency 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 consideration.

c. Within 30 days of intra-agency appeal, the director or designee shall review the appeal. The director or designee shall affirm, modify, or reverse the agency decision, and remand if necessary. If the case file is remanded, the director or designee shall transfer the case file to investigative staff for further processing.

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

a. The agency 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 agency concerning a material issue in the case file by the respondent, a witness, or some other person who is not the complainant;

(2) Error by the agency staff.

b. The 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 agency, 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 agency 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 agency 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 agency or in district court.

b. If the aggrieved party seeks agency 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 agency 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.

d. The director or designee shall determine if 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.

[ARC 8198C, IAB 8/21/24, effective 9/25/24]

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:

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 an administrative law judge 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.

[ARC 8198C, IAB 8/21/24, effective 9/25/24]

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 determines that a complainant may be irreparably injured before a contested case hearing, the executive director or designee may direct an attorney for the agency to seek appropriate injunctive relief to preserve the rights of the complainant and the public interest.

[ARC 8198C, IAB 8/21/24, effective 9/25/24]

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¹ The Administrative Rules Review Committee at its May 21, 1979, meeting delayed the effective date of 240—subrules 1.1(7) to 1.1(9), 1.3(1), 1.8(2) and rules 1.16 and 1.17 70 days.

² Effective date of 161—3.2(4), 3.2(5), 3.3(3), 3.4(216), 3.5(216), 3.7(3), 3.8(216), 3.10(216), 3.12(216), 3.13(8) to 3.13(10), 3.14(216) and 3.16(216) delayed 70 days by the Administrative Rules Review Committee at its meeting held March 9, 1993; delayed until adjournment of the 1994 Session of the General Assembly by this Committee May 11, 1993.