

161—9.5(216) Commission procedures regarding complaints based on alleged unfair or discriminatory practices occurring after July 1, 1991.

9.5(1) *Time limitation of rule.* This rule applies only to alleged discriminatory housing or real estate practices occurring after July 1, 1991.

9.5(2) *Time limit for administrative complaint.* A complaint which alleges a discriminatory housing or real estate practice is governed by the 180-day time limit provided in Iowa Code section 216.15(12).

9.5(3) *Processing of complaint.*

a. Service. Upon the filing of a complaint:

(1) The commission shall, not later than ten days after such filing or the identification of an additional respondent under 9.5(3)“d,” serve on the respondent a notice identifying the alleged discriminatory housing practice and advising the respondent of the procedural rights and obligations of respondents under the applicable sections of Iowa Code chapter 216, together with a copy of the original complaint; and

(2) Each respondent may file, not later than ten days after receipt of notice from the commission, an answer to the complaint.

(3) The commission shall, not later than ten days after the filing of a complaint, serve the complainant a notice acknowledging receipt of the complaint and advising the complainant of the time limits and choice of forums provided under Iowa Code chapter 216.

b. Timely investigation. The commission will begin the investigation within 30 days of filing. If the commission is unable to complete the investigation within 100 days after the filing of the complaint, the commission shall notify the complainant and respondent in writing of the reasons for not doing so.

c. Amendments. Complaints and answers shall be under oath or affirmation and may be reasonably and fairly amended at any time.

d. Additional respondents.

(1) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under 9.5(3)“a,” to such person from the commission.

(2) Such notice, in addition to meeting the requirements of 9.5(3)“a,” shall explain the basis for the commission’s belief that the person to whom the notice is addressed is properly joined as respondent.

e. Closure within one year. Within one year of the date of receipt of a complaint alleging a discriminatory housing or real estate practice, the commission shall take final administrative action with respect to that complaint unless it is impracticable to do so. If the commission is unable to make final disposition of the case within the one-year period, the commission shall notify the complainant and respondent in writing of the reasons for not doing so.

9.5(4) *Probable cause determination.*

a. Final investigative report. After the completion of the commission’s investigation, the investigator shall prepare a final investigative report. This final investigative report shall include:

(1) The names and dates of contacts with witnesses excepting those witnesses who request to remain anonymous. The commission, however, may be required to disclose the names of such witnesses in the course of an administrative hearing or a civil action conducted pursuant to the Iowa civil rights Act;

(2) A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

(3) A summary description of other pertinent records;

(4) A summary of witness statements; and

(5) Answers to interrogatories.

b. Determination procedure. If, after the completion of investigation, a mediation agreement under Iowa Code section 216.15A(2)“a” to “e” has not been executed by the complainant and the respondent and approved by the commission, the commission shall conduct a review of the factual circumstances revealed as part of the investigation.

(1) If the commission determines that, based on the totality of the factual circumstances known at the time of the commission’s review, no probable cause exists to believe that a discriminatory housing

practice has occurred or is about to occur, the commission shall: issue a short and plain written statement of the facts upon which the no probable cause determination was based; dismiss the complaint; notify the aggrieved person(s) and the respondent(s) of the dismissal (including the written statement of facts) by regular or certified mail or personal service; and make public disclosure of the dismissal.

Respondent(s) may request that no public disclosure be made. Notwithstanding such request, the fact of dismissal, including the names of the parties, shall be public information available on request.

The commission's determination shall be based solely on the facts concerning the alleged discriminatory housing practice provided by complainant and respondent(s) and otherwise disclosed during the investigation.

(2) If the commission believes that probable cause may exist to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall forward the matter to the executive director or designee for consideration. In all such cases the executive director or designee shall determine, with advice from the office of the attorney general, whether, based on the totality of the factual circumstances known at the time of the decision, probable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The determination shall be based solely on the facts concerning the alleged discriminatory housing practice provided by complainant and respondent and otherwise disclosed during the investigation.

c. Determination of probable cause. A determination of probable cause shall be followed by the issuance of a probable cause order. A probable cause order:

(1) Shall consist of a short and plain written statement of the facts upon which the commission has found probable cause to believe that a discriminatory housing practice has occurred or is about to occur;

(2) Shall be based on the final investigative report; and

(3) Need not be limited to facts or grounds that are alleged in the complaint. If the probable cause order is based on grounds that are alleged in the complaint, the commission will not issue the probable cause order with regard to those grounds unless the record of the investigation demonstrates that the respondent has been given an opportunity to respond to the allegation.

d. Timely determination. The commission shall make the probable cause determination within 100 days after the filing of the complaint unless it is impracticable to do so. If the commission is unable to make the determination within this 100-day period, the commission will notify the aggrieved person and the respondent by regular mail or personal service of the reasons for the delay.

e. Effect of probable cause determination. A finding of probable cause regarding a complaint alleging a discriminatory housing or real estate practice commences the running of the period during which an aggrieved person on whose behalf a complaint was filed, a complainant, or a respondent may, pursuant to Iowa Code section 216.16(1), elect to have the charges asserted in the complaint decided in a civil action in district court. If an election is made, the commission shall authorize the attorney general to file a civil action on behalf of the aggrieved person seeking relief. If no election is made, then the commission must schedule a hearing on the charges in the complaint.

f. Effect of no probable cause determination. A finding of "no probable cause" regarding a complaint alleging a discriminatory housing or real estate practice results in prompt dismissal of the complaint. If the finding is not reconsidered, the commission may take no further action to process that complaint except as may be necessary to carry out the commission's administrative functions.

g. Standard. The standard to determine whether a complaint alleging a discriminatory housing or real estate practice is supported by probable cause shall include consideration of whether the facts are sufficient to warrant initiation of litigation against the respondent.

9.5(5) Hearing.

a. Conduct. A contested case hearing regarding a complaint alleging a discriminatory housing or real estate practice is conducted on the same terms and in the same manner as any other contested case hearing conducted by the commission.

b. Hearing time frames.

(1) Trial date. The administrative law judge shall commence the hearing regarding a complaint alleging a discriminatory housing or real estate practice no later than 120 days following the issuance of the finding of probable cause, unless it is impracticable to do so. If the administrative law judge

is unable to commence the hearing within 120 days after the issuance of the probable cause order, the administrative law judge shall notify the executive director, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing, of the reasons for not doing so.

(2) Decision date. The administrative law judge shall make findings of fact and conclusions of law within 60 days after the end of the hearing regarding a complaint alleging a discriminatory housing or real estate practice unless it is impracticable to do so. If the administrative law judge is unable to make findings of fact and conclusions of law within this period, or any succeeding 60-day period thereafter, the administrative law judge shall notify the executive director, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing, of the reasons for not doing so.

9.5(6) Access to file information in housing cases.

a. Nothing that is said or done in the course of mediation of a complaint of housing or real estate discrimination may be made public or used as evidence in a subsequent administrative hearing under subrule 9.5(5) or in civil actions under Iowa Code chapter 216, without the written consent of the persons concerned.

b. Notwithstanding the prohibitions and requirements with respect to disclosure of information contained in paragraph 9.5(6) “*a*” the commission will make information derived from an investigation, including the final investigative report, available to the aggrieved person and the respondent. Following completion of the investigation, the commission shall notify the aggrieved person and the respondent that the final investigative report is complete and will be provided upon request.

c. Where the commission has made a finding of no probable cause regarding a complaint alleging a discriminatory housing or real estate practice, the aggrieved person and the respondent may obtain information derived from the investigation and the final investigative report. Provided, however, that the phrase “information derived from the investigation” as used in this rule and in Iowa Code section 216.15A(2) “*f*” shall not include the contents of statements by witnesses other than the complainant or respondent.

d. Prior to a finding of either probable cause or no probable cause regarding a complaint alleging a discriminatory housing or real estate practice no access may be had to the information contained within the commission investigatory file except that:

(1) Any witness may request a copy of the witness’s own statement made to the commission as part of the commission’s investigation of the complaint,

(2) Any person may request copies of any information that that person sent to the commission in the course of processing the complaint,

(3) Any person may request copies of any information that the commission had previously sent to that person in the course of processing the complaint.