

161—1.6(216) Referral and deferral agencies.

1.6(1) *Statement of purpose.* It is the purpose of the commission, in adopting these rules to promote the efficient enforcement of the Act. To this end, the commission will use referral and deferral agreements to encourage agencies with similar powers and jurisdiction to:

- a. Develop procedures with remedies necessary to ensure the protection of rights secured by the Iowa Civil Rights Act.
- b. Increase the efficiency of their operations.
- c. Cooperate more fully with the commission in the sharing of data and resources, and
- d. Coordinate investigations and conciliations with the commission in order to eliminate needless duplication.

1.6(2) *Definitions.*

a. “*Agency*” refers to any agency of municipal government established by ordinance for the purpose of eliminating discrimination on any basis protected by the Act or any state or federal governmental unit with jurisdiction over allegations of discrimination that is capable of obtaining remedies similar to those obtainable by the commission.

b. “*Referral*” means the process by which the commission cross-files a charge of discrimination with a referral agency, which extinguishes the legal ability of the commission to process the charge; provided, however, that the referral agency accepts the referred charge and that the commission has the reciprocal right to accept or reject charges cross-filed by the referral agency.

c. “*Referral agency*” means any agency of local government that has been awarded that status by contract with the commission.

d. “*Deferral*” refers to the process whereby the commission notifies an agency of local, state, or federal government that a complaint has been filed with the commission and that the commission will postpone its investigative activities for a period of 60 days while the deferral agency investigates and attempts to resolve the matter. Extensions of this time period may be granted by the commission or the executive director when just cause is shown by the agency for the time extension requested.

e. “*Deferral agency*” means any agency so designated by contract pursuant to these rules.

1.6(3) *Procedure for obtaining referral status.*

a. *Guidelines for designation.* The executive director will evaluate the applications of agencies and may designate agencies as referral agencies where they conform to the following guidelines:

(1) The agency should have professional staff to enable it to comprehensively investigate complaints and to ensure the processing of the charges expeditiously.

(2) The ordinance or enabling legislation under which the agency is established must provide at a minimum the same rights and remedies to discrimination as available under the Act, and

(3) The enabling legislation of the agency shall provide, at a minimum, that the agency may hold public hearings, issue cease and desist orders, and award damages to injured parties which shall include, but are not limited to, actual damages.

b. *Application.* Any agency desiring to be designated as a referral agency by the commission may send a letter of application to the executive director of the commission. Attached to the application must be a copy of the agency’s enabling ordinance, a list of its investigatory personnel, the average number of hours worked by each per week, and a report for the previous 12-month period detailing the following:

- (1) The number of cases filed with the agency,
- (2) The number of probable cause and no probable cause findings,
- (3) The number of cases successfully conciliated,
- (4) The number of cases taken to public hearing,
- (5) The average length of time spent investigating each case,
- (6) The cumulative remedies obtained for the previous 12-month period and average remedy obtained per case,
- (7) An assessment of the quality of the agency’s investigation,
- (8) The agency’s standards to preserve quality investigations, and
- (9) The status of the agency’s caseload.

c. Rejection of application. Where the executive director determines that an agency does not qualify as a referral agency, the director shall so inform the agency in writing along with the reasons for the agency's rejection.

If the reasons for the agency's rejection are corrected, the agency will then be designated as a referral agency. The executive director's decision may be appealed to the commission at its subsequent regular meeting.

d. Designation and contract. Where the executive director determines that an agency is qualified as a referral agency, the director will prepare a contract between the commission and the agency containing the terms on which cases will be referred. Upon execution of the contract, the executive director will designate the agency as a referral agency.

e. Terms of the referral contract. The referral contract shall be negotiated with the referral agency, but shall include the following:

(1) Terms prohibiting a complainant who has filed with the commission from cross-filing with a referral agency and vice versa,

(2) Terms permitting the commission to refer complaints filed with it to a referral agency for processing and vice versa,

(3) Terms prohibiting the commission from processing a charge referred to and accepted by the referral agency and vice versa,

(4) Terms permitting the commission or a referral agency to reject a charge referred to it for processing,

(5) Terms ending the contract after two years, subject to renegotiation, and

(6) Any other terms mutually agreed upon.

1.6(4) Procedure for obtaining deferral status.

a. Application. Any agency desiring to be designated as a deferral agency by the commission may send a letter of application to the executive director of the commission. Attached to the application must be a copy of the agency's enabling legislation or grant of jurisdiction, a list of its personnel and statement indicating their permanent or part-time status, their functions, and a summary of the agency's prior efforts at preventing and eliminating discrimination. The application must also explain how the agency is capable of obtaining remedies substantially similar to those available under the Act.

b. Guidelines for designation. The executive director will evaluate the applications of all agencies and may designate deferral agencies where the agencies conform to the following guidelines:

(1) The agency should have available resources to enable it to investigate complaints to ensure processing within a reasonable period of time,

(2) The agency's enabling legislation or grant of jurisdiction must permit it to obtain substantially the same remedies as are available under the Act,

(3) The agency must be able to make a diligent effort to investigate and resolve the complaints filed with it, and

(4) The agency is capable of obtaining remedies substantially similar to those available under the Act by informal means.

c. Rejection of application. Where the executive director determines that an agency does not qualify as a deferral agency, the director shall so inform the agency in writing along with the reasons for the agency's rejection.

If the reasons for the agency's rejection are corrected, the agency will then be designated as a deferral agency. The executive director's decision may be appealed to the commission at its subsequent regular meeting.

d. Designation and contract. Where the executive director determines that an agency is qualified as a deferral agency, the director will prepare a contract between the commission and the agency containing the terms on which cases will be deferred. After execution of the contract, the executive director will designate the agency as a deferral agency.

e. Terms of the deferral contract. The deferral contract shall include, subject to negotiations with the agency, the following:

(1) The commission will agree to notify the deferral agency of all complaints filed with the commission which are within the deferral agency's jurisdiction, except where a complainant requests in written form that the deferral agency not be notified.

(2) The deferral agency will agree to aid all complainants whose complaints come within the commission's jurisdiction in completing the commission's complaint forms as well as notarizing them and forwarding the fully executed forms to the commission where the necessity to file a formal complaint exists. If, however, a matter may be resolved informally more expeditiously the deferral agency will simply notify the commission by letter of the complaint and resolution obtained. "Informally resolved complaints" shall refer to complaints that can be resolved within ten days.

(3) The commission will agree to postpone its investigation for at least 60 days of any complaint filed with a deferral agency unless otherwise agreed to by both parties. These waiver agreements will be made on an individual case basis.

(4) The agency will agree not to disclose the filing of a complaint or confidential information pertaining to a complaint until the complaint has been officially set for public hearing.

(5) The commission and the deferral agency shall share copies of all findings, case summaries, and conciliation agreements.

(6) Where a complaint is on file with a deferral agency, the commission will allow the deferral agency access to the contents of the complainant's file provided that the deferral agency allows the commission like privileges and has not previously disclosed confidential information prior to public hearing.

(7) Photocopying of materials from commission files for use by a deferral agency is solely at the discretion of the commission staff, but will not be unreasonably denied. When the commission copies from the agency's file, the agency shall be reasonably compensated for copying costs.

(8) The commission will give substantial weight to the findings of a deferral agency where pertinent and relevant factual evidence exists to support those findings.

(9) The commission will not necessarily be bound by the agency's conclusions of law.

(10) Where a deferral agency reaches a finding of probable cause to support an allegation of discrimination the contract may permit the agency to pursue conciliation, or to refer the case back to the commission for conciliation. The contract may also permit an agency that has attempted conciliation to refer that case back to the commission for public hearing. In no case where a case has been referred back to the commission will it be referred back to the agency. Where a case is conciliated or a hearing is held by the agency or the commission, both will be bound by the final determination.

(11) The period for which the contract will be in effect shall not exceed two years, subject to renegotiation.

(12) The contract may contain other terms agreed to by the parties.