Agency Name: Human Affairs Commission

Statutory Authority: 31-21-30 and 31-21-100

Document Number: 4830

Proposed in State Register Volume and Issue: 42/10

House Committee: Regulations and Administrative Procedures Committee

Senate Committee: Judiciary Committee

120 Day Review Expiration Date for Automatic Approval: 05/08/2019

Final in State Register Volume and Issue: 43/5

Status: Final

Subject: Hearing Procedures (Review and Enforcement)

History: 4830

By Date Action Description Jt. Res. No. Expiration Date

- 10/26/2018 Proposed Reg Published in SR

- 01/08/2019 Received by Lt. Gov & Speaker 05/08/2019

H 01/08/2019 Referred to Committee

S 01/08/2019 Referred to Committee

H 02/27/2019 Resolution Introduced to Approve 4114

S 03/13/2019 Resolution Introduced to Approve 651

- 05/08/2019 Approved by: Expiration Date

- 05/24/2019 Effective Date unless otherwise

provided for in the Regulation

Document No. 4830

**SOUTH CAROLINA HUMAN AFFAIRS COMMISSION**

CHAPTER 65

Statutory Authority: 1976 Code Sections 31-21-30 and 31-21-100

65-235. Hearing Procedures (Review and Enforcement).

**Synopsis:**

Regulation 65-235 governs the requirements for the Agency’s procedures during the course of a Fair Housing Law administrative hearing, to include when and where the hearing should be held, as well as the process for appealing a final decision of the agency.

Notice of Drafting for the proposed amended regulation was published in the *State Register* on September 28, 2018.

**Instructions:**

Replace Regulation 65-235 as printed below.

**Text:**

65-235. Hearing Procedures (Review and Enforcement).

A. Date and place of hearing.

(1) The hearing shall commence not later than 120 days following the issuance of the complaint unless it is impracticable to do so. If the hearing cannot be commenced within this time period, the Commissioner shall notify in writing all parties of the reason for the delay.

(2) The hearing will be conducted at the Commission or at a place in the vicinity in which the discriminatory housing practice is alleged to have occurred or about to occur.

(3) The complaint issued will specify the time, date and place for the hearing. The Chief Hearing Commissioner may change the time, date or place of the hearing, or may temporarily adjourn or continue a hearing for good cause shown. If such a change is made or the hearing is temporarily adjourned, the Chief Hearing Commissioner shall give the parties at least five days notice of the revised time, date and place for the hearing, unless otherwise agreed by the parties.

B. Conduct of Hearing.

(1) The case in support of the complaint shall be presented before the panel by a commission attorney or by the aggrieved person or his attorney.

(2) The case in support of the respondent shall be presented before the hearing commissioners by the respondent or its attorney.

(3) Evidentiary matters.

(a) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the court of common pleas shall be followed. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(b) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare their copy with the original.

(c) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the Commission’s specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The Commission’s experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

(d) No testimony or evidence shall be given or received at any hearing concerning any offers or counter offers made in an effort to conciliate any alleged unlawful housing practice.

(e) All testimony shall be given under oath or affirmation and records of the proceedings shall be made and kept.

(f) Any party may conduct cross examination.

(4) Stipulations. The parties may file stipulations as to facts, in which event the same shall be numbered and used at the hearing. In addition, oral stipulations may be made at the hearing and shall be included in the record of the hearing. Such stipulations shall not preclude the offering of additional evidence by any party. However, a stipulation may be withdrawn by any party in the event evidence is presented at the hearing which is inconsistent with the stipulation.

(5) Motions and objections. Motions made during a hearing and objections with respect to the conduct of a hearing, including objections to the introduction of evidence, shall be stated in writing or orally and shall be included in the record of the hearing.

(6) Oral arguments and briefs. The Chief Hearing Commissioner shall permit the parties or their attorneys to argue orally before the panel and to file briefs within such time limits as the Chief Hearing Commissioner may establish. Oral arguments shall not be included in the record unless the Chief Hearing Commissioner shall so direct or unless requested by any party.

(7) Public hearings. All Commission hearings shall be open to the public unless the Chief Hearing Commissioner for good cause directs a closed hearing.

(8) Waiver of hearing. With the consent in writing of the respondent and notice to all parties, an order may be entered without holding any hearing or the making of any findings of fact or conclusions of law.

C. Record of hearing.

The record of the hearing shall include:

(1) All pleadings, motions, intermediate rulings and depositions;

(2) All evidence received or considered;

(3) A statement of matters officially noticed;

(4) Questions and offers of proof, objections and rulings thereon;

(5) Proposed findings and exceptions; and

(6) Any decision, opinion or report by the presiding hearing commissioner.

D. Contents of Order.

(1) An Order of the Panel shall be in writing or stated in the record and shall separately set forth the findings of fact and conclusions of law of the panel, the Commission’s final decision, and an opinion containing the reasons for said decision. Such decisions as to whether an unlawful housing practice occurred shall be reached by a majority vote of the panel. Concurring and dissenting opinions of individual hearing commissioners shall be included in the Order.

(2) If the panel finds that a respondent has engaged or is about to engage, in a discriminatory housing practice, the panel shall order such relief as may be appropriate, which may include, but is not limited to:

(a) Damages to the aggrieved person (including damages caused by humiliation and embarrassment);

(b) Injunctive or such other equitable relief as may be appropriate, which Order may not affect any contract, sale, encumbrance or lease consummated before the issuance of the decision that involved a bona fide purchaser, encumbrancer or tenant without actual knowledge of the issuance of a complaint.

(c) To vindicate the public interest assessment of a civil penalty against the respondent, not to exceed civil penalties permitted by the Federal Fair Housing Act, as amended.

E. Filing of Order.

(1) The parties shall be notified and provided a copy of the Order either by personal delivery or by registered or certified mail.

(2) All Orders shall be filed in the Commission office, Columbia, South Carolina, and a copy of all Orders shall be provided to the Attorney General.

F. Reconsideration of Order.

(1) Request for Reconsideration. After a hearing and the issuance of a final Order, the panel may, upon its own motion or upon application of any party or intervenor for good cause or whenever justice so requires or where an Order of determination or decision was made upon default of a party affected thereby, reconsider any closed proceeding upon notice to all parties, intervenors and the Attorney General, and take such action as it may deem necessary.

(2) Time Limitation for Filing Reconsideration Request. No application for reconsideration shall be considered unless filed within fourteen days from the date the Order of the Commission was rendered.

G. Transcript of Record.

The Commission’s copy of the written transcript of the record shall be available during the regular office hours of the Commission to the complainant and respondent for examination without cost, for the purpose of appeal to the Administrative Law Court from the order of the Commission. The Commission’s copy of the testimony shall, in the discretion of the Commissioner or the Chairman, also be available to intervenors and other persons, for such purposes, to such an extent and for such fee as the Commissioner or the Chairman may determine.

H. Judicial Review and Enforcement of Final Decision.

(1) Judicial Review.

(a) Who May Apply. A party aggrieved by a Final Order of the Commission may seek judicial review of the Order pursuant to S.C. Code § 31-21-130 (N) or (O).

(b) Forum. A proceeding for judicial review may be brought within thirty days of issuance of the Order of the Commission in the Administrative Law Court.

(c) Procedures. A proceeding for judicial review is subject to the Administrative Procedures Act, S.C. Code § 1-23-10, et seq., and the Rules of the Administrative Law Court.

(2) Petitions for Enforcement.

(a) After 30 days from the date the Commission Order is issued, the Commission may file a petition for enforcement of its Order in the court of common pleas of the county in which the hearing occurred or where a person against whom the Order is entered resides or transacts business if the Commission believes judicial enforcement is necessary to ensure compliance with its Order.

(b) A petition for review filed pursuant to Section A above shall operate as a supersedeas for 30 days only, unless otherwise ordered by the court, and thereafter the respondent shall be required to comply with the Order of the Commission until the appeal is decided.

(c) If no request for review is filed, the Commission’s petition for enforcement shall be granted upon a showing that a copy of the petition was served upon the party subject to the provisions of the Commission’s Order.

**Fiscal Impact Statement:**

No additional state funding is requested. The Agency estimates that no additional costs will be incurred by the state in complying with the proposed amendments to 65-235.

**Statement of Rationale:**

Regulation 65-235, Hearing Procedures (Review and Enforcement), should be changed so that hearings may ordinarily be held at the Commission’s sole location in Columbia, South Carolina. Additionally, the appropriate forum for judicial review of an administrative hearing decision is the Administrative Law Court of South Carolina (see S.C. Code Ann. §31-21-130(O)(2)). Finally, the numbering of the regulation needs correction for citation purposes.