

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

IN THE MATTER OF: Standing Practice Order
Public Hearings Under the PHRA, 43 P.S. §§ 951-963
Order No. SPO-Rev-1

STANDING PRACTICE ORDER

AND NOW, this 23rd day of May, 2022, it is hereby **ORDERED** that all parties to a public hearing under the Pennsylvania Human Relations Act, 43 P.S. §§ 951-963, shall conform to the hearing procedures specified within the Standing Practice Order as made available to the public on the Commission's website at www.phrc.pa.gov.



M. Joel Bolstein, Esquire
Chairperson

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RULE 1: Title and Citation of Rules

All rules contained herein shall be known and cited as SPO Rule # ____.

RULE 2: Jurisdiction and Confidentiality

This Standing Practice Order (SPO) shall supplement hearing procedures specified at 1 Pa. Code Chapters 31, 33, 35 and 16 Pa. Code Chapter 42.

The parties are instructed to adhere to all relevant and applicable federal and state statutes and regulations regarding confidentiality.

RULE 3: Scope and Interpretation

(a) This SPO applies to all matters that have been approved for a public hearing pursuant to 43 P.S. § 959(d) and 16 Pa. Code § 42.101.

(b) The rules shall be liberally construed to secure the just, speedy, and inexpensive determination of every action or proceeding to which they are applicable. The presiding officer at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties.

RULE 4: Special Accommodations

If any party or witness needs a special accommodation, the affected party must notify the presiding officer during the initial pre-hearing conference, or as soon as possible after the initial pre-hearing conference, so necessary arrangements may be made.

RULE 5: Filing and Service of Documents

(a) After parties receive notice that the matter has been approved for a public hearing, pursuant to 43 P.S. § 959(d) and 16 Pa. Code § 42.101, all correspondence, pleadings, briefs, orders, and other papers relating to the case shall be filed with the Commission. Filings should be emailed to the Commission's adjudication account: ra-hradjudication@pa.gov. Instructions for emailing documents for filing are attached as Appendix A. A party who wishes to hand-deliver a document for filing should contact the Commission's office in advance.

(b) Parties must serve a copy of all filings on all parties of record. See 1 Pa. Code § 33.32; 16 Pa. Code § 42.34.

(c) Parties with an email address are strongly encouraged to consent to receive service of documents by email. A Consent to Electronic Service form is attached as Appendix B. Service of all documents where a party or its attorney has filed a Consent to Electronic Service form shall be accomplished by delivery of documents to the designated email address. Parties who consent to receive service by email will not receive a paper copy of documents by regular mail. Where any party has not filed a Consent to Electronic Service form, service of all documents shall be accomplished by mailing a paper copy, properly addressed with postage prepaid, in accordance with 1 Pa. Code § 33.31.

Rule 6: Motions

(a) All pre-hearing motions or petitions must be in writing. See 16 Pa. Code 42.34. Before filing a pre-hearing motion or petition, a party shall contact all other parties and ask whether they will object to the request contained within the motion. The other party's response or the movant's inability to contact the other party should be noted within the motion. If a party is appearing without counsel, a statement regarding the opposing party's position need not be included with the motion or petition.

(b) Any party shall have fifteen (15) days within which to respond to any written pre-hearing motion unless another period of time is otherwise fixed by the presiding officer. See 16 Pa. Code § 42.54.

(c) All pre-hearing motions must be filed at least twenty (20) days before the scheduled public hearing date.

(c) Motions made during a public hearing may be stated orally on the record. See 16 Pa. Code § 42.34.

Rule 7: Changes to Hearing Date

(a) A party must request changes in a hearing date or time by filing a written motion, in accordance with SPO Rules 5 and 6, and demonstrating good cause for such request.

(b) Requests for a continuance of the hearing date should be made as soon as the requesting party is aware that a reason for a continuance exists, but no later than ten (10) days prior to the scheduled hearing date, except in emergency circumstances.

(c) Continuances are at the discretion of the presiding officer who may refuse a request for continuance regardless of the concurrence of all parties.

Rule 8: Pre-Hearing Conferences

(a) After the parties receive notice that the matter has been approved for a public hearing, pursuant to 43 P.S. § 959(d) and 16 Pa. Code § 42.101, the presiding officer shall schedule an initial pre-hearing conference within thirty (30) days of such notice, unless the presiding officer determines another appropriate time period for holding such conference.

(b) The purpose of the initial pre-hearing conference is to facilitate the timely and effective disposition of the case. In preparation for the conference, the presiding officer will direct each party to file a pre-hearing statement containing the following information: (1) a concise statement of the legal and factual issues presented by each party's case; (2) an initial list of all witnesses to be called in each party's case-in-chief and a summary of the anticipated testimony of each witness; (3) an initial list of all exhibits proposed to

be offered into evidence during the presentation of each party's case in chief; (4) an estimate of the amount of time needed to present each party's case-in-chief and available hearing dates; (5) the willingness of each party to admit to or stipulate to the procedural prerequisites to a public hearing; and (6) any other information the presiding officer deems necessary for the timely and effective disposition of the case.

(c) Subsequent to the initial pre-hearing conference, the presiding officer may hold additional pre-hearing conferences as the need arises, pursuant to 16 Pa Code § 42.75 and 1 Pa. Code §§ 35.112-35.116.

(d) All pre-hearing conferences will be conducted in accordance with 16 Pa Code § 42.75 and 1 Pa. Code §§ 35.112-35.116.

(e) Subsequent to the initial pre-hearing conference, the presiding officer shall, through pre-hearing order, set the hearing date, time, and location. If the hearing is to be held by remote means, the presiding officer will so notify the parties in the pre-hearing order and include instructions on how to participate and the method for sequestration of witnesses, if applicable. The presiding officer will also set the dates for discovery, including the date by which discovery must be completed.

Rule 9: Witness List

(a) Subsequent to the initial disclosure of witnesses provided by SPO Rule 8, the parties shall provide updated witness lists to all other parties as they become aware of additional witnesses that may be called to testify.

(b) No later than thirty (30) days prior to the scheduled public hearing, the parties shall provide a final witness list to all other parties and to the Commission's adjudication account: ra-hradjudication@pa.gov.

(c) The final witness list shall identify the witnesses the party expects to present and those it may call if the need arises. The final witness list shall include the name, address, and telephone number of each witness.

(d) Any expansion of the witness list after the expiration of the time period for filing the final witness list may only be done by informal agreement of the parties or by filing written application to the Commission, by email to the Commission's adjudication account, ra-hradjudication@pa.gov, with good cause shown. Such request may be granted or denied at the discretion of the presiding officer.

Rule 10: Exhibit List

(a) Subsequent to the initial disclosure of exhibits provided by SPO Rule 8, the parties shall provide updated exhibit lists to all other parties as they become aware of additional exhibits that may be introduced at the public hearing.

(b) No later than thirty (30) days prior to the scheduled public hearing, the parties shall provide a final exhibit list to all other parties and to the Commission, by email to the Commission's adjudication account, ra-hradjudication@pa.gov. Electronic submission of documents is preferred, in accordance with SPO Rule 5.

(c) The final exhibit list shall identify each exhibit, pre-marked, and include whether the parties have stipulated to the authenticity or admissibility of the exhibit.

(d) Any expansion of the exhibit list after the expiration of the time period for filing the final exhibit list may only be done by informal agreement of the parties or by filing written application to the Commission, by email to the Commission's adjudication account, ra-hradjudication@pa.gov, with good cause shown. Such request may be granted or denied at the discretion of the presiding officer.

Rule 11: Stipulations

No later than fifteen (15) days prior to the scheduled public hearing, the parties shall provide final stipulations to the Commission, by email to the Commission's adjudication account, ra-hradjudication@pa.gov, regarding factual matters not in dispute. Upon receipt of the final stipulations by the presiding officer, such stipulations will become part of the official docket in the matter.

Rule 12: Hearings

(a) Hearings may be conducted in-person or by remote methods. All parties must consent for a hearing to be conducted by fully remote methods. The presiding officer may elect to hold an in-person hearing despite the agreement of the parties to conduct the hearing remotely.

(b) The presiding officer may allow a party or witness to testify by remote methods upon motion of a party and for good cause shown, unless the presiding officer determines that the use of remote testimony would result in prejudice to the nonmoving party and that prejudice outweighs the good cause for allowing the remote testimony. Factors the presiding officer may consider that would support a finding of good cause include: (1) whether the witness or party might be unavailable because of age, infirmity, or mental or physical illness; (2) whether the moving party has been unable to secure in person testimony of the witness by service of a subpoena or other reasonable means; (3) whether a personal appearance by the witness or party would be an undue hardship on the witness or party, and (4) any other circumstances that constitute good cause.

(c) When remote testimony is taken, the method of such testimony must allow the presiding officer and all parties to observe the demeanor of the witness in like manner as if the witness were testifying in person. Telephone or other nonvisual transmission should be authorized only with the consent of all parties or where video transmission is not readily available and there is a compelling need for the use of telephone or other nonvisual transmission. Further guidelines regarding the conduct of hearings by remote methods is attached as Appendix C.

Rule 13: Post-Hearing Briefs

(a) Unless waived by the parties with the consent of the presiding officer, participants in a public hearing shall have the right to file post-hearing briefs in accordance with 16 Pa. Code § 42.121.

(b) Post-hearing briefs shall be filed within thirty (30) days from the date the final transcript is received by all parties, absent good cause shown otherwise. The manner of filing and the time of filing post-hearing briefs will be set by the presiding officer, giving regard for the magnitude of the record, the complexity of the issues, and other matters as may be deemed necessary or appropriate. See 16 Pa. Code § 42.121. 30 days

(c) Post-hearing briefs shall include proposed findings of fact (with appropriate citation to the record), conclusions of law, and a memorandum in support of the conclusions of law. Briefs shall be as concise as possible. The presiding officer may fix a maximum length for post-hearing briefs. See 1 Pa. Code § 35.192.

(d) Reply briefs shall be filed within fifteen (15) days from the date the final post-hearing brief is received by all parties, absent good cause shown otherwise. The manner of filing and the time of filing reply briefs will be set by the presiding officer, giving regard

for the magnitude of the record, the complexity of the issues, and other matters as may be deemed necessary or appropriate.

Rule 14: Current Contact Information

All parties have an affirmative obligation to keep the Commission informed of their current address, telephone number, and email address. If a party has a change in address, telephone number, or email address, the party shall immediately inform the Commission and all parties, in accordance with SPO Rule 5, of any such changes.

Rule 15: Proposed Findings of Fact, Conclusions of Law, and Final Order

The presiding officer shall submit their Proposed Findings of Fact, Conclusions of Law, and Final Order to the full Commission for review within sixty (60) days from the date the final transcript or the final post-hearing brief is received by the presiding officer, whichever date is later. With good cause shown, the presiding officer may request an additional thirty (30) days to submit their Proposed Findings of Fact, Conclusions of Law, and Final Order to the full Commission for review.

APPENDIX A

Instructions for Emailing Documents for Filing – SPO Rule 5

Instructions for Emailing Documents for Filing with the PHRC

1. Documents to be submitted electronically must be in PDF format.
2. Documents to be filed may be emailed to: ra-hradjudication@pa.gov
 - a. This email address is solely for submitting attached PDF documents for filing.
 - b. Do not include comments, questions, or additional correspondence in the email as such comments, questions, or additional correspondence will not receive a response from the Commission.
3. Documents to be filed must be attached to the email and not contained in the body of the email.
4. Documents filed by email must be signed by the filing party either by (a) signing by hand and then scanning the document, or (b) signing electronically using a digital signature.
5. The email and attached documents must contain the filer's name, address, telephone number, and the case's docket number (if one has been assigned).
6. A document submitted for filing by email does not have to be delivered in hard copy form to the Commission.
7. The email and attachment will constitute the official record of the filing.
8. Documents received by 11:59 pm will be considered filed that day. Documents received after 11:59 pm or on weekends and holidays will be considered filed the following business day.

Service of Documents Filed by Email

1. Documents filed by email must be served on all participants.
2. Service may be made on the PHRC by emailing a copy to: ra-hradjudication@pa.gov
3. All other participants must be served by mailing a paper copy, properly addressed with postage prepaid, unless the participant has filed a Consent to Electronic Service form with the Commission.
4. Service is complete upon mailing or emailing but is not effective if the filer learns that the document did not reach the person to be served.
5. Documents submitted for filing by email must contain a signed Certificate of Service indicating the date the document was placed in the mail or emailed.

THE COMMISSION MAY REJECT FILINGS THAT DO NOT CONFORM TO THESE REQUIREMENTS.

APPENDIX B

CONSENT TO ELECTRONIC SERVICE

I am the participant named below, or I am authorized to accept service on behalf of the participant named below. I hereby consent to receive service of notices and documents in my case by means of the email address provided below. I affirm that:

1. I have regular access to my email account and to the internet and will check my email account regularly so that I do not miss a case filing or notice.
2. I understand that by consenting to electronic service, I will no longer receive the same documents in paper form by mail.
3. I will promptly notify the Commission Office if there is any change in my personal data, such as name, address, or email address.
4. I understand that I may cancel this consent to electronic service at any time by notifying the Commission in writing.

Case Name and Docket Number: _____

Participant Name: _____

Attorney Name and ID Number (if applicable): _____

Mailing Address:

Phone Number: _____

Email Address: _____

Signature: _____ Date: _____

Return completed form to: ra-hradjudication@pa.gov

APPENDIX C

CONDUCT OF HEARING BY REMOTE METHODS

(a) *Contacting attorneys, parties, and witnesses in a telephone or video conference.*

- (1) At the beginning of the hearing, the Presiding Officer will put on the record the following information:
 - (i) The names of each individual participating in the hearing.
 - (ii) Whether the individual is participating by telephone or video conference.
 - (iii) The time at which the Presiding Officer initiates contact with the attorney, parties, and witnesses.
- (2) The witness to be examined shall be available and ready to be sworn and begin testimony upon being telephoned or when video conferencing is initiated and shall remain available until excused by the Presiding Officer.
- (3) Where a witness or party is not on the telephone or video conference call at the scheduled time for the hearing to start or, for a witness scheduled for another pre-designated time, the Presiding Officer, following the scheduled time of the hearing or other pre-designated time, will attempt to contact that party or witness by telephone or email before conducting the hearing without the party or witness being present. If a party or witness seeks to join the proceeding after that time and can show good cause for the delay in joining, the Presiding Officer, in his or her discretion, may permit the party or witness do so.
- (4) The equipment used by the court reporter, the parties and their witnesses must be capable of and produce a clear transmission satisfactory to the Presiding Officer. The parties and their witnesses are responsible for having a reliable internet (for video hearings) or telephonic (for telephone hearings) connection in a quiet space, free from background noise that could impede the integrity of the transcription of the hearing and the ability of the Presiding Officer, the court reporter, and the parties and their counsel to hear what is being said.

(5) To facilitate matters, at least three business days prior to the hearing each party should provide at least one alternative means of contacting the individual that will be effective for the date and time of the hearing.

(b) *Oath or affirmation.*

(1) The witness testifying by telephone or video conference will be placed under oath in the same manner as if the witness were appearing in person.

(2) The oath or affirmation administered to a witness testifying by telephone or video conference must indicate that the witness will not testify from or use any document unless the document has been brought to the attention of the Presiding Officer and that the testimony shall not be prompted or directed during the hearing by any other person.

(c) *Opportunity to verify witnesses.*

(1) The tribunal will permit parties a reasonable opportunity to question a witness testifying by telephone or video conference for the purpose of verifying the identity of the witness.

(2) Falsification of identity may be subject to prosecution and punishment under 18 Pa. C.S. § 4902 (relating to perjury) and 18 Pa. C.S. § 4903 (relating to false swearing).

(d) *Use of documents.*

(1) A witness testifying by telephone or video conference may only use a document previously provided to all parties and the Commission.

(2) A copy of each document to be relied upon by a witness shall be pre-marked as an exhibit and pre-submitted as set forth above and as may be further defined in a pre-hearing scheduling order.

(e) *Recording the proceedings.*

(1) Only the court reporter is authorized to record the proceeding for the purpose of producing a verbatim transcript. Attorneys and parties are not permitted to record or video/audio tape the proceeding.