

AGENDA

Human Relations Commissioner Training

March 30, 2007

1. Overview of HRC/HRD history
2. Review of Chapter X, Article I of the Code of the City of Lawrence, Kansas
3. Review of complaint processing procedure
4. Fair housing enforcement and information education
5. Employment and public accommodations enforcement and information education
6. Recommendation of Investigative Commissioner for Probable Cause or No Probable Cause
7. Public hearing rules and regulations
8. Business community issues and grass root communication

DEPARTMENT: HUMAN RELATIONS
Number of employees: 3

General description of responsibilities and functions:

The Human Relations Department (HRD) is the City's civil and human rights enforcement agency. The department accepts, investigates, decides and resolves allegations of unlawful discrimination in employment, housing, and public accommodations on the bases of race, sex, religion, color, national origin, age, ancestry, disability, sexual orientation, and familial status in housing. The department director serves as the executive administrative staff member of the Human Relations Commission, and provides administrative and technical support. Additional responsibilities of the department include:

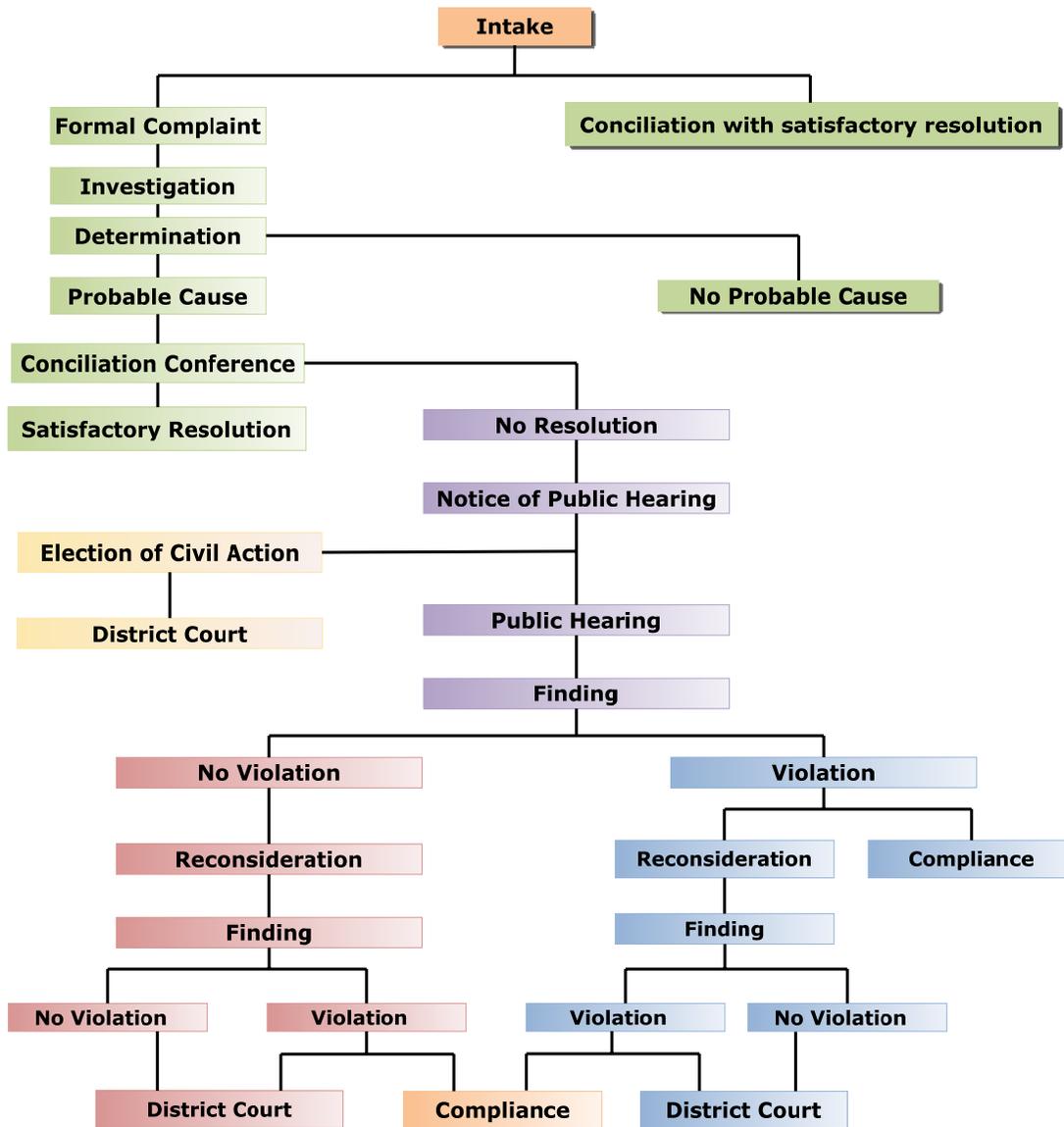
- Contract compliance
- Monitoring the City's affirmative action plan and employment practices
- Providing technical assistance to local businesses
- Providing employment information, some counseling and referrals for individuals who are unemployed or underemployed
- Acting as an information and referral resource for social services
- Providing public education and training on equal employment opportunity, equal access to public accommodations, fair housing equal opportunity, etc.

Critical Issues / Challenges / Goals:

Issues and goals for the Human Relations Department include:

- The Human Relations Commission provides leadership in eliminating discrimination and prejudice throughout Lawrence
- Provide public education for City departments, other governmental agencies, businesses, schools, and citizenry
- Emphasize staff and commissioners development training in order to enhance our professional capabilities
- Timely processing of "Formal" and "Informal" complaints by completing a minimum of 85% of case inventory within 90 days of filing

The Complaint Process





City of Lawrence

KANSAS

Human Relations Commission

COMMISSIONER TRAINING

Discrimination Concepts

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The Investigative Process

DISCRIMINATION CONCEPTS

Terms

Prejudice:	Pre-judgment
Stereotype:	A perceived common trait(s) believed to apply to most or all members of a group.
Cultural trait:	A demonstrable common trait which applies to most members of a group (culture).
Culture:	Commonality of life style for a group.
Bias:	Predisposition of thought; preference.
Racism:	Negative racial bias, combined with sufficient power to bring about and enforce discrimination.
Ethnocentrism:	A belief of superiority attributable to one's ancestry.
Androcentrism:	A belief that males are superior to females.
Theocentrism:	A belief that a specific religion is superior to all others.

Social Science Theories of Discrimination

- A. TYPES & PROGRESSIVITY
 1. Anti-locution
 2. Avoidance
 3. Separation(Segregation)
 4. Assault (physical)
 5. Murder
 6. Genocide (ethnic cleansing)

- B. LEVELS
 1. Individual
 2. Sporadic group
 3. Institutional
 - a. Direct
 - b. Indirect
 1. Side Effect
 2. Past-In-Present

IMPORTANT: Discrimination is always Unfair. Unfair is not always discrimination.

Legal Theories of Discrimination

DIRECT EVIDENCE:	“Per Se Discrimination” / Intentional Discrimination (Least Common)
DISPARATE (Differential) TREATMENT:	Intentional discrimination where a person is treated less favorably than similarly situated comparators, based upon protected class status. (McDonald Douglas v. Green) (Most Common)
ADVERSE (Disparate) IMPACT:	Unintentional discrimination facially neutral policy results in negative impact upon a protected class. (Griggs v. Duke Power Co.)

Establishment of a Prima Facie Case

DEFINITIONS

Prima Facie: At first view; on its face. The term relates to a circumstance that does not require further support to establish existence, validity, credibility.

Tort Law: Torts are civil wrongs recognized by law as grounds for a lawsuit. These wrongs result in an injury or harm constituting the basis for a claim by the injured party. The primary aim of tort law is to provide relief for the damages incurred and deter others from committing the same harms. The injured person may sue for an injunction to prevent the continuation of the conduct or for monetary damages.

- A. Civil Rights Laws follow the basic procedures of Tort Law.
1. To Establish a Prima Facie Case under Tort Law, the following elements must be present:
 - a. The Complainant must have “Standing”.
 - b. The Respondent is “Covered” by law and has a duty to the Complainant.
 - c. The Respondent breached his/her duty to the Complainant.
 - d. The Complainant was damaged as a result of the Respondent’s breach of duty to the Complainant

Elements of a Civil Prima Facie Case Pursuant to Civil Rights Law

- A. The Complainant is a member of a protected class (standing).
- B. The Respondent is a covered entity. (The Respondent has a duty to comply with civil rights laws).
- C. The Respondent took an action, or failed to take an action which adversely affected (damaged) the Complainant and is a violation of law (breach of duty to comply with the law, resulting in damages).
- D. The Respondent’s breach of duty is attributable to the Complainant’s protected class status (an articulation of a theory of discrimination).

Example

1. I am an African American.
2. I applied to XYZ Company for a position for which I was qualified.

3. A lesser qualified Caucasian was hired for the position for which I had applied.
4. The Respondent's hiring of a lesser qualified Caucasian constitutes discrimination based upon my race.

Types of Respondent Defenses

- A. Attack the accuracy and truthfulness of the prima facie case.
- B. Establish a bonafide occupational qualification.
- C. Establish a valid business necessity.
- D. Establish the validity of policies that are fair in form and evenly applied without adverse disparate impact.

THE INVESTIGATIVE PROCESS

Jurisdiction

- A. Complainant Standing
- B. Covered Respondent
- C. Basis
- D. Issues
- E. Timeliness
 1. Continuing violation
 2. Equitable tolling
- F. Location of violation
- G. Establish prima facie case

Once the jurisdiction and a prima facie case are established, the burden of proof shifts to the Respondent to articulate a viable defense.

Types of Evidence

- A. Documents
 1. Policies and procedures
 - a. Employment
 - i. At-will
 - ii. Contract

- iii. Inferred contract
 - 2. Affirmative Action Plan
 - 3. Comparative data
 - a. Similarly situated comparators
 - 4. Personnel files
 - 5. Other
- B. Testimony
- 1. Complainant
 - 2. Complainant's witnesses
 - 3. Respondent
 - 4. Respondent's witnesses
 - 5. Third party witnesses
- C. Physical Evidence

Investigative Procedures

- A. General
- 1. Promptness
 - 2. Impartiality
 - 3. Confidentiality
- B. Intake (Counsel Complainant on Options)
- C. Investigative Materials Request
- 1. Position Statement
 - 2. Position on mediation
 - 3. Non-response subpoena
- D. Preliminary Investigative Conference
- 1. Optional procedure
 - 2. Attempt to resolve
 - a. Mediate settlement
 - b. Withdraw complaint

- E. Field Investigation
 - 1. On-site investigation
 - 2. Supplemental document review
 - 3. Witness Interviews
 - 4. Attempt mediation

- F. Determination
 - 1. Final Investigative Report and case file review
 - 2. No Probable Cause: Evidence is insufficient to credit the allegation of the complaint; Advise Complainant of appeal options (KHRC/EEOC/Etc.... or file in court)
 - 3. Probable Cause: The preponderance of evidence supports the Complainant's prima facie case and also establishes the Respondent's defense as a pretext for discrimination. Establish damages.

- G. Conference and Conciliation
 - 1. 45 DAYS

- H. Enforcement Options
 - 1. Public Hearing
 - 2. District Court

- I. Administrative Closure
 - 1. Failure to locate Complainant
 - 2. Respondent no longer doing business within jurisdiction
 - 3. Failure of the Complainant to cooperate
 - 4. Death of Complainant
 - 5. Case filed in court
 - 6. Request by Complainant to transfer complaint to a higher
 - 7. Failure of the Complainant to accept a reasonable settlement offer

- J. Advantages of Settlement
 - 1. Psychological closure
 - 2. Preclusion of litigation
 - 3. Reduced damages/expenses

**Rules and Regulations for Public Hearings
By The
Lawrence Human Relations Commission**

Presented November 14, 1994

Adopted February 27, 1995

- 10-108.11-1 Notice of Public Hearing**
- 10-108.11-2 Hearing Panel**
- 10-108.11-3 Scheduling of Public Hearings**
- 10-108.11-4 Consolidation**
- 10-108.11-5 Prehearing Conference**
- 10-108.13-1 Subpoenas**
- 10-108.14-1 Complainant Representation**
- 10-108.14-2 Commissioner Participation**
- 10-108.14-3 Disclosure of Endeavors at Conciliation Prohibited**
- 10-108.14-4 Respondent Representation**
- 10-108.14-5 Amendment of Complaint and/or Respondent's Answer**
- 10-108.14-6 The Public Hearing**
- 10-108.15.1 Order; Remedies**
- 10-108.16-1 Order; Dismissal**
- 10-108.17-1 Service of Order**
- 10-108.18-1 Reconsideration of Order**
- 10-108.19-1 Time Limit for Final Administrative Disposition**
- 10-108.20-1 Appeal to District Court**
- 10-108.21-1 Civil Enforcement of Order**