

Michigan Office of Administrative Hearings and Rules
Administrative Rules Division (ARD)

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REQUEST FOR RULEMAKING (RFR)

1. Department:

Civil Rights

2. Bureau:

Civil Rights Commission

3. Promulgation type:

Full Process

4. Title of proposed rule set:

Organization, Practice, And Procedure

5. Rule numbers or rule set range of numbers:

R 37.1 - R 37.27

6. Estimated time frame:

3 months

Name of person filling out RFR:

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MDCR, Capitol Tower, 110 Michigan Ave., Lansing, MI 48933

7. Describe the general purpose of these rules, including any problems the changes are intended to address.

Rule 37.2 Definitions

Several new definitions are being added. They primarily address the need for more clarity in the complaint investigation process. Key in this regard is that the existing rules use the term "complaint" to apply to the legal document the department prepares and serves on respondents. However, when people come to us with their concerns, especially if they put them in writing, they believe they are filing a complaint. The result is not only confusion, but a perception that the department is denying someone the ability to even complain. We thus propose to call the allegations initially filed a complaint. If it is jurisdictional, we will "certify" it by creating the document now identified as a complaint and asking the claimant to sign. A certified complaint is one that is ready to be served on respondent to initiate an investigation.

Also being changed are the definitions describing how to file documents with us, and the counting of days for determining whether the documents are timely. These definitions are modeled after the ones in the Michigan Court Rules and ensure that when the date something is due falls on a day the office is not open, the document is not due until the next day when we are. We also modernize

the way documents can be filed with us to permit electronic service.

We add a definition for signature in order to notify parties that by signing they are attesting to the truthfulness of the document. This also allows us to eliminate the present requirement for claimants to have their complaints notarized. This process may have worked well when all complaints were filed in person, but it currently creates an unnecessary barrier for many claimants who must find, and often pay, a notary.

Finally, we add a definition for summary of complaint. This document is provided to claimants when their complaint is not within the department's jurisdiction or is untimely. It is presently called a "statement of concern" which sounds like an affirmative action, when it is really a denial of a request to certify a complaint.

Rule 37.4 Complaints

These changes again relate to distinguishing between the "complaint" that is filed with the department and the "certified complaint" that is prepared and served by the department. It also clarifies that the department will assist someone wishing to file a complaint, but it is the department that will prepare the certified complaint for a claimant's signature.

They also provide for the use of electronic means for serving documents.

Rule 37.5 Conciliation conference.

This rule is being revised to provide a clearer understanding of a conciliation conference, which is a last attempt to settle a matter to the satisfaction of the parties who otherwise face the commitment of time and resources necessary if it goes to hearing. It also explains what happens if a conciliation conference fails (the Department may conduct additional investigation, dismiss the Certified Complaint based on the investigation or refer the Certified Complaint for legal review with a recommendation for a Charge and an administrative hearing).

Rule 37.6 Charge; issuance; refusal to issue.

This rule was minimally revised to include the new definitions of "mail and "electronic service".

Rule 37.7 Reconsideration of refusal to issue charge; request; hearing.

This section has been significantly changed to describe the reconsideration process more clearly, and to inform parties of the criteria being used. Reconsideration is a process much like an appeal, though it stays within the department as the actual appeal would be filed in circuit court. It is an opportunity for the department to make certain we can support a decision to close a case if an appeal is filed.

Rule 37.10 Charge; service.

Language updated to reflect the opportunity to serve documents electronically.

Rule 37.11 Answer to a charge.

Rule 11 describes the mandatory requirement that a respondent answer the allegation(s) when an

investigation results in the department bringing a charge of discrimination, what the department must do upon receipt of the answer to a charge, and to permit the use of electronic service of the documents.

Rule 37.12 Hearing on a charge.

The changes here are minor. They intend to make the rule read more clearly, and to count time in multiples of seven days for consistency.

Rule 37.25 Exemption from particular section of act; bona fide occupational qualification (BFOQ).

While the need to use a BFOQ may change over time, the present rules provide that the exception be unending. Whether the changes are societal, legal, or even technological, the department believes a decision to let an employer do what otherwise would be illegal discrimination should be reviewed periodically, or even withdrawn if it is being abused.

8. Please cite the specific promulgation authority for the rules (i.e. department director, commission, board, etc.).

Michigan Civil Rights Commission, Michigan Constitution, Article V, Section 29
Const. 1963, Art. V, § 29, Eff. Jan. 1, 1964, R 37.1 et seq. and R 37.101 of the Michigan
Administrative Code.

[http://www.legislature.mi.gov/\(S\(bncxahp1lq124c0qelkeifpp\)\)/mileg.aspx?
page=getobject&objectname=mcl-Article-V-29&query=on&highlight=civil%20AND%20rights%
20AND%20commission](http://www.legislature.mi.gov/(S(bncxahp1lq124c0qelkeifpp))/mileg.aspx?page=getobject&objectname=mcl-Article-V-29&query=on&highlight=civil%20AND%20rights%20AND%20commission)

A. Please list all applicable statutory references (MCLs, Executive Orders, etc.).

MCL Chapter 37. Civil Rights

MCL 37 applies to MCDR (1976 PA 453).

Const. 1963, Art. V, § 29, Eff. Jan. 1, 1964

R 37.1 et seq. and R 37.101 of the Michigan Administrative Code.

"...Following are the portions of the Revised Constitution of the State of Michigan, approved by the people on April 1, 1963, which pertain specifically to civil rights and to the creation of the Civil Rights Commission...

"...Article V Executive Branch. The commission shall have power in accordance with the provisions of the constitution and of general laws governing administrative agencies, to promulgate rules and regulations for its own procedures, to hold hearings, administer oaths, through court authorization to require the attendance of witnesses and the submission of records, to take testimony and to issue appropriate orders. The commission shall have other powers provided by law to carry out its purposes. Nothing contained in this section shall be construed to diminish the right of any party to direct and immediate legal or equitable remedies in the courts of this state."

B. Are the rules mandated by any applicable constitutional or statutory provision? If so, please explain.

No. The MCRC's authority to promulgate rules is permissive pursuant to Mich. Comp. Laws § 37.2101 MCL 37.2101 to 37.2804.

1976, Act 453, Eff. Mar. 31, 1977 ;--Am. 1977, Act 162, Imd. Eff. Nov. 8, 1977

9. Please describe the extent to which the rules conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.

The rules complement and/or are "substantially equivalent" to:
Age Discrimination in Employment Act of 1967 (ADEA)
Americans with Disabilities Act
Fair Housing Act
Individuals with Disabilities Education Act PDF icon
Rehabilitation Act of 1973
Title II of the Civil Rights Act of 1964 (public accommodations)
Title IV of the Civil Rights Act of 1964 (education)
Title IX of the Education Amendments Act of 1972
Title VI of the Civil Rights Act of 1964
Title VII of the Civil Rights Act of 1964 (employment)
Deaf Persons' Interpreter Act
Division on Deaf and Hard of Hearing Act
Dog License Fee Waiver
H.S. Language Credit for American Sign Language
Harassing, Assaulting, or Interfering with Hearing/Service Dog
Persons with Disabilities Civil Rights Act
Refusing Entry to Hearing/Service Dog, Misdemeanor

10. Is the subject matter of the rules currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?

Commission Rules: Organization, Practice and Procedures [https://www.michigan.gov > documents > pamph...PDF](https://www.michigan.gov/documents/pamph...PDF)
the Michigan Compiled Laws). R 37,1 Civil rights within commission jurisdiction. Rule 1. The civil rights within the jurisdiction of the commission shall be ...

11. Are the rules listed on the department's annual regulatory plan as rules to be processed for the current year?

Yes. These rules were included on MDCR's Annual Regulatory Plan for 2021.

12. Will the proposed rules be promulgated under Section 44 of the Administrative Procedures Act, 1969 PA 306, MCL 24.244, or under the full rulemaking process?

Full Process

13. Please describe the extent to which the rules exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

The rules do not exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

14. Do the rules incorporate the recommendations received from the public regarding any complaints or comments regarding the rules? If yes, please explain.

No.

15. If amending an existing rule set, please provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed the regulatory activity covered by the rules since the last evaluation.

Effective October 17, 1979.
Rule 37.2 Definitions

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“complaint” to apply to the legal document the department prepares and serves on respondents. However, when people come to us with their concerns, especially if they put them in writing, they believe they are filing a complaint. The result is not only confusion, but a perception that the department is denying someone the ability to even complain. We thus propose to call the allegations initially filed a complaint. If it is jurisdictional, we will “certify” it by creating the document now identified as a complaint and asking the claimant to sign. A certified complaint is one that is ready to be served on respondent to initiate an investigation.

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16. Are there any changes or developments since implementation that demonstrate there is no continued need for the rules, or any portion of the rules?

No.

17. Is there an applicable decision record (as defined in MCL 24.203(6) and required by MCL 24.239(2))? If so, please attach the decision record.

No