

Michigan Office of Administrative Hearings and Rules
MOAHR-Rules@michigan.gov

**AGENCY REPORT TO THE
JOINT COMMITTEE ON ADMINISTRATIVE RULES (JCAR)**

1. Agency Information

Agency name:

Civil Rights

Division/Bureau/Office:

Civil Rights Commission

Name of person completing this form:

Lamont Satchel

Phone number of person completing this form:

313-456-3700

E-mail of person completing this form:

satchell1@michigan.gov

Name of Department Regulatory Affairs Officer reviewing this form:

Lamont Satchel

2. Rule Set Information

MOAHR assigned rule set number:

2021-89 CR

Title of proposed rule set:

Organization, Practice, And Procedure

3. Purpose for the proposed rules and background:

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.

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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.

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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.

4. Summary of proposed rules:

The proposed rule changes clarify practices of the Michigan Commission on Civil Rights and definitions. The changes also facilitate flexibility and efficiency in the operation of the commission and Department of Civil Rights by allowing electronic filings and notifications and remote/virtual proceedings. The proposed rules make a significant change to the bona fide occupational qualification (BFOQ) process by limiting the duration an any exception that is granted to five (5) years to allow for the commission to determine if the reasons for the exception are no longer applicable.

5. List names of newspapers in which the notice of public hearing was published and publication dates:

Detroit Free Press/Detroit News - January 9, 2023; Lansing State Journal - January 9, 2023; The Mining Journal - January 5, 2023.

6. Date of publication of rules and notice of public hearing in Michigan Register:

12/15/2022

7. Date, time, and location of public hearing:

1/23/2023 01:30 PM at Grey Room and Virtual Room: Zoom , Cadillac Place, 3054 West Grand Blvd., Suite 3-600, Detroit, Michigan 48202; <https://us06web.zoom.us/j/85625959246?pwd=cUdGUkF0M0ozc1J6Zi93c2Y3TWNuQ>

8. Provide the link the agency used to post the regulatory impact statement and cost-benefit analysis on its website:

<https://ARS.apps.lara.state.mi.us/Transaction/RFRTransaction?TransactionID=1347>

9. List of the name and title of agency representative(s) who attended the public hearing:

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Lamont D. Satchel, Esq., General Counsel, Michigan Department of Civil Rights.

10. Persons submitting comments of support:

None.

11. Persons submitting comments of opposition:

None.

12. Persons submitting other comments:

None.

13. Identify any changes made to the proposed rules based on comments received during the public comment period:

	Name & Organization	Comments made at public hearing	Written Comments	Agency Rationale for Rule Change and Description of Change(s) Made	Rule number & citation changed
1					

14. Date report completed:

3/6/2023