

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
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Respondent

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Before: Kathleen E. Byrne, Hearing Examiner

SCHEDULING AND PROCEDURES ORDER

Complainant in the above-captioned case alleges unlawful discrimination in employment. The Respondent declined the invitation to a conciliation session with the Montgomery County Human Rights Office. The Director of the Office of Human Rights (OHR) determined that reasonable grounds exist to believe that a violation of Chapter 27 of the Montgomery County Code has occurred (DKT. 1). By Order dated January 16, 2025, the Case Review Board of the Montgomery County Commission of Human Rights (MCCHR) referred the above-captioned complaint to OZAH for the purpose of conducting a public hearing under the provisions of Montgomery County law, and thereafter submitting a written Report and Recommendation to the Case Review Board. (DKT. 1).

To arrange for the hearing, discovery and appropriate pre-hearing submissions, **a pre-hearing conference is hereby scheduled for 11:30 a.m., Monday, March 17, 2025**, via Microsoft Teams, an email with the meeting link to follow.

Paragraph 14 of this Order sets forth the proposed schedule for discovery, submission of pre-hearing statements, and the hearing. This schedule will be discussed at the pre-hearing conference and may be further amended, so the parties should bring their calendars and be prepared to provide an estimate of the span of time they expect to need for discovery. The discussion will also include preliminary matters and any other procedural concerns that the parties wish to raise.

If the parties are represented by counsel, only the attendance of attorneys for the parties is required at the scheduling conference. If an individual party is unrepresented, they must appear on behalf of themselves.

The following are some basic rules that will govern further proceedings:

1. Procedures in this litigation will be governed by Chapter 27 of the Montgomery County Code, the Montgomery County Administrative Procedures Act (MCAPA), Code §§ 2A-1 through 2A-11, and the Human Rights Commission Regulations, COMCOR Chapter 27.
2. Copies of all correspondence with OZAH shall be served on the opposing party.
3. OZAH's address appears in the heading of this Order. No *ex parte* communication with the Hearing Examiner is permitted at any time.
4. Written submissions to OZAH must be submitted both in duplicate hard copies and in electronic copies. A copy of any written matter filed with OZAH shall be served on the opposing party by hard copy, either in person or by first-class mail. The electronic copies filed with OZAH must be submitted to OZAH in the following formats: filings containing text you have generated must be submitted in Microsoft WORD format. If you are filing copies of text documents not generated by your office, the electronic copy filed with OZAH must be submitted in either Microsoft WORD format or text-searchable PDF format. The electronic copies of diagrams or images must be submitted in PDF format. These electronic copies should be submitted by e-mail to ozah@montgomerycountymd.gov.
5. Unless otherwise agreed, or ordered by the Hearing Examiner, responses to pre-hearing motions or other pre-hearing filings should be served on the opposing party and filed with OZAH both electronically via email at ozah@montgomerycountymd.gov and in hard copy within 10 calendar days after service (plus three calendar days when responding to motions served by mail). Service on a party is complete when deposited with the United States Postal Service, and filing is complete when emailed to OZAH office by the due date.

6. All motions must include a statement that the other party has been asked to agree to the relief requested in the motion as well as a statement disclosing whether the other party has informed the movant that it expects to oppose the motion. If the movant is unable to reach the other party after reasonable, good-faith efforts to do so, the motion shall include a statement to that effect.
7. Discovery will be governed by MCAPA § 2A-7(b). At the scheduling conference, we will discuss whether this case warrants supplementing the discovery parameters by applying the Maryland Rules for civil discovery in the Circuit Courts, Md. Rule 2-401 *et seq.*, subject to modification by future Order to take into account the relatively informal nature of administrative proceedings.
8. The parties are encouraged to reach agreement on a plan for the scheduling and completion of discovery.
9. Discovery material shall not be filed with OZAH. Rather, the party propounding the discovery shall promptly file with OZAH a notice stating (A) the type of discovery material served, (B) the date and manner of service, and (C) the party or person served. The party generating the discovery material shall retain the original and shall make it available for inspection by any other party. Discovery materials may be introduced as evidence at the hearing, or be used for cross-examination, under the normal rules of evidence. They may also be used as exhibits to support or oppose motions.
10. The hearing, when scheduled, will be held via a “hybrid” format meaning the use of both Zoom for remote participants and in person in the OZAH hearing room in the Stella B. Werner Council Office Building. OZAH will arrange for a court reporter. The hearing will be somewhat less formal than a judicial trial, but it will proceed in an orderly manner in accordance with the MCAPA, with sworn witnesses subject to cross-examination. Hearsay may be admitted if it is probative and reliable. *See MCAPA § 2A-8(e)*. The hearing will be public. The parties will be asked whether they would like a rule on witnesses, *i.e.*, a rule excluding witnesses (other than the parties themselves) from the “hearing room” except during the witnesses’ own testimony.
11. The record on which the Hearing Examiner and the Human Rights Commission will base their findings and conclusions will consist of the verbatim transcript of the testimony and exhibits admitted at the hearing. The record will not automatically include matters filed with OZAH or the Office of Human Rights, except as necessary to establish jurisdiction (*e.g.*, the Complainant’s complaint and the Human Rights Commission’s referral to OZAH). Other items will be included in the record only if the parties stipulate to them, or if they are introduced and admitted at the hearing, or if they are otherwise admitted by the Hearing Examiner.

12. The parties' pre-hearing submissions must contain all the information specified Code § 2A-7(a)(1), as well as a legal brief, a set of labeled exhibits, and a joint pre-hearing submission, specifying all items that are mutually stipulated and all objections to the authenticity or admissibility of any opposing exhibits. These items must be filed by the date agreed to at the scheduling conference. Individual submissions will include the following:
- a. All documents which will be relied upon at the hearing, including investigative reports, or portions thereof. The Hearing Examiner may, in his or her discretion, exclude from evidence any materials or documents not included in the pre-hearing submission.
 - b. List of names and addresses of all prospective witnesses, together with summaries of their expected testimony.
 - c. List of names and addresses of any persons requested to be summoned by the Hearing Examiner and any documents or records requested to be subpoenaed for the hearing.
 - d. Estimate of time to present case.
 - e. A brief statement of your legal theories and points and authorities.
13. The referral order gives OZAH the authority only to write a report and recommendation, not a decision in the case. However, Sec. 2A-7(d) of the MCAPA allows a motion for summary decision (below). If summary decision is warranted, the Hearing Examiner may recommend that to the Human Rights Commission in his/her report and recommendation in the case.
- (d) Summary Decision. Any party may file a motion for summary decision at least 30 days before the date of a hearing. The hearing authority may grant summary decision if the hearing authority finds that:
- (1) there is no genuine issue of material fact to be decided at the hearing; and
 - (2) the moving party is entitled to prevail as a matter of law.
- The hearing authority must give all other parties at least 10 days to respond to the motion for summary decision before deciding the motion. The hearing authority may permit oral argument on the motion.
14. The following schedule is proposed, subject to modification at the scheduling conference based on the reasonable suggestions of the parties:

June 15, 2025	Completion of Discovery
August 8, 2025	Complainant's submission of pre-hearing statement
August 22, 2025	Respondent's submission of pre-hearing statement
September 26, 2025	Joint pre-hearing submission

October 14, 2024 Hearing

15. Supplemental Orders will be issued following the pre-hearing conference to confirm the schedule of events, through the convening of a hearing. Thereafter, motions to change the agreed schedule will be granted only upon a showing of good cause.

So ORDERED, this 5th day of March, 2025.



Kathleen E. Byrne
Hearing Examiner

COPY TO:

Loretta J. Garcia, Esquire
Manager of Enforcement Programs
Office of Human Rights