

Proposed Local Law Number 12 Of 2020

County of Ulster

A Local Law Amending Local Law No. 4 of 2018, A Local Law Establishing An Ulster County Human Rights Law

BE IT ENACTED, by the Legislature of the County of Ulster, as follows:

SECTION 1. Section 4(1) of Local Law No. 4 of 2018 is hereby amended to read as follows:

1. The Commission of Human Rights shall have all of the authority, powers, duties and obligations expressly set forth in Article 12-D of the General Municipal Law, and shall also have the authority to engage in processes of conference, conciliation and persuasion, with the active assistance of the New York State Division of Human Rights (“State Division”), if needed, in the mediation and solution of complaints within the jurisdiction of the State Division, so as to amicably resolve such complaints, reduce tensions, build consensus, and foster harmony between the various and diverse communities within Ulster County and to otherwise report, but not initiate, any such complaints to the State Division, and shall also have the authority to create bylaws for its own governance, proceedings and activities, but shall not exercise any powers, duties or obligations **outside of not otherwise expressly set forth in General Municipal Law 12-D or the Ulster County Human Rights Protection Act of 2018.**

SECTION 2. Section 4(3) of Local Law No. 4 of 2018 is hereby amended to read as follows:

3. The Commission or its authorized designee shall actively monitor and assist persons with such claimed human rights violations through the process administered by the State Division, or pursuant to Section 5 ~~6~~ hereof by the local Hearing Officer, for such claims that have not been successfully resolved by the Commission, or its authorized designee, through mediation and conciliation at the local level should such persons elect to file a discrimination claim with the State Division or the local Hearing Officer. The assistance rendered under this paragraph shall not include the rendering of legal advice or legal representation to any party.

SECTION 3. Section 6 of Local Law No. 4 of 2018 is hereby amended to read as follows:

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SECTION 6. INDEPENDENT ADMINISTRATIVE HEARING OFFICER.

1. ~~An Independent Administrative Hearing Officer (“Hearing Officer”) is hereby created, established and authorized to hear~~ **In the event that a** complaints of a persons in Ulster County with claimed human rights violations arising under any New York State, Federal or Local human rights law or regulation occurring in Ulster County ~~where such claims have~~ **has** not been successfully resolved by the Commission, or its authorized designee, though mediation or conciliation at the local level, **the Commission shall select an Independent Administrative Hearing Officer (“Hearing Officer”) from a panel of potential Hearing Officers to hear the case** and to issue orders assessing monetary damages or other appropriate non-monetary relief where liability is determined to exist.

2. ~~The Hearing Officer shall be appointed by the County Executive, subject to confirmation by the Legislature, and shall serve at the pleasure of the County Executive. Any Hearing Officer so appointed shall be an attorney admitted to practice law in good standing by the State of New York having been so admitted for no less than five (5) years. Such appointments shall first be made from a panel of retired Supreme Court Justices residing in Ulster County, but if none are able or willing to serve, from any eligible attorney.~~

2. The panel of potential Hearing Officers shall be appointed by the County Executive, subject to confirmation by the Legislature. The panel shall consist of three to five individuals who meet the following criteria:

(A) Each individual shall be an attorney admitted to practice law in good standing by the State of New York having been so admitted for no less than five (5) years; and

(B) Each individual shall agree to be available within thirty (30) days of notice unless there are extenuating circumstances. If a panel member is unavailable more than three time in any given year, then that panel member shall automatically be deleted.

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Panel members shall be selected by the Commission on a rotating basis. In the event a panel member is unavailable or cannot participate due to a conflict of interest, the panel member will remain at the top of the list and the next panel member on the list will be chosen.

3. The Hearing Officer has the authority to require the attendance of witnesses or the production of documentary evidence by subpoena.

4. The Hearing Officer may not accept any complaint hereunder unless it is accompanied by certification from the Commission that 30 days has passed since receipt of the complaint or that respondent has refused mediation and conciliation, whichever shall first occur, or in the alternative that mediation and conciliation of the complaint has been attempted but has not resolved the complaint, and by a waiver and relinquishment, sworn to by the complainant, of any and all rights to file a complaint with the New York State Division of Human Rights, any federal civil rights agencies, such as the Department of Housing and Urban Development ("HUD") or the Equal Employment Opportunity Commission ("EEOC"), or with the commission on human rights of any city, town or village located in Ulster County, which is based upon the same transaction or occurrence or series of transactions or occurrences which are the subject of the complaint sought to be filed. ~~The Hearing Officer shall promulgate and make available appropriate forms of complaints, certifications and of waiver and relinquishment.~~

5. The Hearing Officer shall give to respondent written notice of the complaint, **inform the respondent of the timeframe to submit an answer and the time and date that the complaint will be heard.** ~~an opportunity to request a hearing on the complaint.~~

6. The written notice shall include, at a minimum:

(A) A concise statement of the factual basis for the complaint;

(B) The amount of damages claimed;

(C) The provisions of State, Federal or Local human rights laws or regulations alleged to have been violated by respondent;

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(D) ~~The right to request a hearing on the material facts and/or the amount of the damages—~~**Respondent's deadline for submitting an answer to the complaint;**

(E) The time and date of the hearing and the ramifications of a default; and

~~(E)~~ **(F) A copy of the rules of the hearing procedures which have been promulgated by the panel of potential Hearing Officers** ~~Hearing Officer.~~

The hearing shall provide a reasonable opportunity to be heard, to assert any applicable answer, affirmative defenses, cross claims or counter claims, to move to dismiss, to cross-examine witnesses, and to present evidence free from interference, coercion, restraint, discrimination, or reprisal, and the parties shall have the right to be represented by a person of his/her choice at any stage of the hearing and proceedings at their own expense.

7. If the respondent fails to appear at the hearing without good cause being shown and the complainant presents a prima facie case against the respondent, the respondent may be found in default. The motion for default and a proposed default order shall be served by the Hearing Officer on all parties, and the defaulting party shall have twenty (20) days from service thereof to reply to the motion. The proposed default order may be set aside for good cause shown in accordance with the Civil Practice Law and Rules. Default by the complainant shall result in the dismissal of the complaint with prejudice.

8. Should liability be found after a hearing, in determining the **non-monetary relief and the** amount of monetary damages to be assessed, the Hearing Officer shall consider the seriousness of the violation(s); any history of such violations; the economic impact (benefit or harm) resulting from the violation(s) to complainant; the economic impact of the damages to be assessed to respondent; and such other factors as justice may require. **Any party to the hearing, or the Commission on behalf of the prevailing party, may seek to convert the relief awarded by the Hearing Officer into a judgment pursuant to the Civil Practice Law and Rules. Money damages, or other non-monetary relief, awarded hereunder shall constitute a judgment as that term is defined in the Civil Practice Law and Rules, which may be enforced in accordance with that statute.**

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9. The ~~Hearing Officer~~ **panel of potential Hearing Officers** shall establish **uniform** rules and forms for discovery consistent with Article 31 of the Civil Practice Law and Rules, and for administration and implementation of this section, including procedures for conducting hearings, motion practice, and other necessary proceedings.

10. Any person against whom money damages, or other non-monetary relief, are assessed under this section may obtain judicial review of such assessment in accord with Article 78 of the Civil Practice Law and Rules.

11. The ~~Hearing Officer~~ **Commission** shall maintain an abstract of all complaints received each year, which abstract shall include the date and subject matter of the complaint, the names of the parties, and the disposition of the complaint.

SECTION 4. SEPARABILITY.

If any clause, sentence, paragraph, section, or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof involved in the controversy in which such judgment shall have been rendered.

SECTION 5. EFFECTIVE DATE.

This local law shall take effect upon filing with the Secretary of State.