

**The Washington Lawyers' Committee for Civil Rights and Urban Affairs
Testimony Before the District of Columbia Committee on Government Operations
Performance Oversight Hearing for the Office of Human Rights
January 22, 2020**

I. Introduction

My name is Mirela Missova and I am a D.C. resident of Ward 6 and an attorney at the Washington Lawyers' Committee for Civil Rights and Urban Affairs ("WLC"). Our attorneys often guide individuals in the District through the administrative complaint process at the D.C. Office of Human Rights ("OHR"), which provides a vital enforcement tool for D.C. residents who have been discriminated against, many of whom do not have access to an attorney. The WLC, much like OHR, addresses some of the most fundamental needs and rights of vulnerable residents, including the right to be free of discrimination accessing housing, employment and wages, and public accommodations.

Last year, I testified on behalf of the WLC before the Committee on Government Operations to highlight serious barriers faced by our clients and lawyers seeking to protect basic civil rights at OHR. While there has been some improvement regarding some of these longstanding concerns, there is still a need for significant improvement if we are to afford D.C. residents an effective forum for vindicating important rights. I am back before you this year to tell you where improvement has occurred and where more needs to be done. In particular, my testimony will highlight the most concerning problems our clients and WLC continue to encounter. Based on our experience, we recommend several critical improvements; specifically, that OHR: **allow all complainants and/or their attorneys to submit formal charges on a permanent basis; limit the role of intake specialists; write formal charges in the complainant's primary language; and abolish the notary requirement.**

II. OHR's Intake Process

One of the most problematic and pressing issues continues to be the intake process at OHR. This process begins with a complainant filling out an intake questionnaire. OHR often does not meet the deadlines set out in its Standard Operating Procedures and unnecessarily delays the processing of complaints. For example, an organization that regularly files OHR complaints has communicated to us that it sometimes takes longer than two months for OHR to even confirm they've received the intake questionnaire and begin to set up an intake interview; meanwhile, OHR's Standard Operating Procedures mandate that OHR will "send the complainant an intake interview appointment letter within 20 business days of receipt of the initial complaint." OHR Standard Operating Procedures, § II.D.1. These kinds of delays are particularly concerning since so many of the individuals with cases at OHR are seeking assistance with problems that have threatened or resulted in the denial of jobs or housing and who are, as a result, facing serious, irreparable hardship.

When an OHR intake specialist finally processes an intake questionnaire, the intake specialist writes the formal charge that will ultimately be filed with OHR. As noted in last year's

testimony, this practice is problematic because OHR intake specialists sometimes omit entire claims and/or crucial facts, such as the identity of respondents and/or the protected category into which the complainant falls. This practice of rewriting charges goes beyond what is contemplated in the D.C. Code, which imposes a lenient standard for the sufficiency of complaints and does not contemplate the outright refusal to accept a claim. As long as the complaint is deemed sufficient (meaning, under the D.C. Municipal Regulations, that the complaint includes “a written statement sufficiently precise to identify the parties, and to describe generally the action or practice complained of”), intake specialists should not limit claims or other key facts included by a complainant. 4 D.C.M.R. § 705.5; *see also* D.C. Code § 2-1403.04 (“The complaint shall state the name and address of the person alleged to have committed the violation, hereinafter called the respondent, and shall set forth the substance thereof, and such other information as may be required by the Office”).

Furthermore, other agencies tasked with similar investigative and enforcement powers, such as the U.S. Equal Employment Opportunity Commission (“EEOC”), accept complainants’ submissions as drafted; OHR, on the other hand, has generally refused to accept charges that complainants or their legal counsel have drafted, thereby effectively discouraging legal counsel from providing assistance or undermining the effectiveness of that assistance. This inflexible practice is significant because inaccurate or missing information in the charge can limit the claims for which complainants can seek redress through the OHR process or, later, in court if the case is litigated.

In response to these and the complaints of many other individuals and advocates, OHR introduced a “Pilot Program” in July 12, 2019. This program, which ran from July 15 to October 15, 2019, made it possible for attorneys representing clients raising public accommodations and employment claims to draft the formal charges for those clients. While a step in the right direction, the Pilot Program does not appear to have been widely disseminated, as OHR received fewer than 10 attorney-drafted charges within that time period. There were other issues with the Program, which the WLC and other advocates discussed with OHR, including some confusing guidance as well as the short duration of the Program. We understand that OHR has or is in the process of evaluating the results of the Program, and that it is considering rolling out a second pilot program, which would last longer and hopefully include a wider array of claims. We are looking forward to the results of the evaluation and to continued work with OHR. Irrespective of what OHR does in terms of a Pilot Program going forward, we do not see any reason why OHR should not simply start accepting attorney-drafted charges for all claims on a permanent basis.

Furthermore, we continue to recommend that OHR allow all individuals, whether or not represented, to draft their own charges and to limit the role of intake specialists. An intake specialist should not be evaluating the substance of complaints, but simply ascertaining whether they adhere to the lenient standards laid out in the D.C. Code and the accompanying D.C. regulation. *See* 4 D.C.M.R. § 705.5; D.C. Code § 2-1403.04. Rather than attempting to assess the relevance of certain facts or the strength of certain legal claims during the intake process, the intake specialist should seek to complete the information that a complainant provides, if necessary, with the goal of providing an inclusive recitation of facts rather than changing or leaving out information. This is particularly important because intake specialists are generally entry-level employees, and OHR has communicated to us that they do not have the resources to

hire more experienced staff for this critical role. We would therefore urge this Committee to pay particular heed to OHR's budgetary asks, as it would be extremely useful for those involved in the intake process to have more experience – either through extensive training or by hiring more experienced individuals – with the issues and the laws presented in the complaints they receive and over which they ultimately have significant control.

Finally, OHR is responsible for administrative enforcement of the D.C. Language Access Act, yet intake personnel draft charges in English for non-English speaking individuals. For example, we have experience with individuals who are not English speakers and are interviewed by an intake specialist in their native language, but whose OHR-drafted formal charge is in English, which the complainant cannot read. Given that the complainant has to swear to the charge, we recommend that OHR intake specialists write the formal charge in the individual's primary language.

III. Notary Requirement

Last year, we raised another procedural hurdle which presents a barrier for individuals: OHR's requirement that charges must be notarized. Notarization can be expensive and is particularly burdensome for unrepresented individuals, as well as for our clients and the clients of our partner organizations, the majority of whom are economically disadvantaged and some of whom are homeless. Further, seeking notary services often requires our clients and unrepresented individuals to request time off of work or incur transportation costs, presenting additional unnecessary burdens. The D.C. Human Rights Act makes no reference to notarization when filing a complaint. § 2-1403.04(a). Furthermore, federal law and the D.C. Superior Court rules allow for anyone to swear or affirm that any statement is true, subject to penalty of perjury, without the need for notarization. *See* 28 U.S.C. § 1746; D.C. Super. Ct. Civ. R. 9-I. Similarly, the EEOC, which has a long-standing agreement with OHR regarding the investigation of claims which raise issues under jurisdiction of both agencies, does not require that its charges be notarized.

As we did last year, we therefore recommend that OHR remove its notarization requirement. Even during last year's testimony, this recommendation was not new to OHR. While we understand that a portion of the regulatory process may be outside of OHR's control, it has now been at least over *two years* since we first made this recommendation, with no results. If OHR continues to drag its feet with respect to this particular issue, the Council should mandate that notarization is not required for the filing of complaints at OHR.

IV. Conclusion

Although the WLC is encouraged by OHR's increased responsiveness to advocate concerns this past year, words must turn into actions. The Pilot Program was a step in the right direction, and we hope to see the Program expand to all claims adjudicated by OHR on a permanent basis. The WLC remains interested in participating in a roundtable to discuss these issues, as had been suggested by Councilmember Todd's office last year but which has yet to be scheduled. Finally, the WLC remains dedicated to working with OHR to continue making progress on these issues.