

**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  
Submitted March 12, 2021**

**I. Introduction**

The mission of the Office of Human Rights (OHR) is to eradicate discrimination, increase equal opportunity and protect human rights in the District of Columbia. Covid-19 has exacerbated existing racial inequity and injustice. Workers of color, women, and persons with disabilities are significantly more likely to have lost a job or have housing instability as a result of the crisis.<sup>1</sup> As the economy reopens, they will also be most vulnerable to discrimination, exploitation, and other Human Rights Act violations and will need to turn to OHR for relief.

For far too long, the agency has failed to effectively fulfill its mission. The Washington Lawyers' Committee for Civil Rights and Urban Affairs and other advocates have worked with OHR and appeared before this Committee of the Council to raise our concerns. Those efforts have not resulted in material improvement of the agency's operations. Given the crisis in our community, we urge the Council to use its oversight authority to create urgency to address longstanding problems, including:

- Lengthy and unexplained delays in the processing and resolution of claims, including claims regarding basic rights that impact housing stability and income;
- The refusal of OHR to hear all claims within its jurisdiction and the practice of re-writing complaints submitted to the agency to eliminate certain asserted facts or assertions of violations of District law, and
- The failure to accommodate persons with disabilities.

**II. Barriers Faced by Individuals at OHR**

The Washington Lawyers' Committee provides representation to complainants before OHR and counsels individuals who appear before the agency without counsel. The concerns that we raise in this testimony come directly from the experience of our clients who have sought to assert their right to a remedy for discrimination under the D.C. Human Rights Act, the D.C. Family and Medical Leave Act, the D.C. Protecting Pregnant Workers Fairness Act, the D.C. Parental Leave Act, and the D.C. Language Access Act. As described below, in many cases, that process has not rendered the justice that they deserve.

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<sup>1</sup> See Connor Maxwell and Danyelle Solomon, *The Economic Fallout of the Coronavirus for People of Color*, Center for American Progress (April 14, 2020), <https://www.americanprogress.org/issues/race/news/2020/04/14/483125/economic-fallout-coronavirus-people-color/>; Allison Norlian, *Workers With Disabilities Disproportionality Impacted by Covid-19 Pandemic*, Forbes (June 22, 2020), <https://www.forbes.com/sites/allisonnorlian/2020/06/22/workers-with-disabilities-disproportionately-impacted-by-covid-19-pandemic/?sh=4a6a50bd1ad1>.

## A. Intake Process

The Office of Human Rights was established to “secure an end to unlawful discrimination in employment, housing, public accommodations, and educational institutions for any reason other than that of individual merit.” D.C. Code § 2-1411.02. It is authorized to “[r]eceive, review, and investigate complaints of unlawful discrimination in employment, housing, public accommodations, or educational institutions.” D.C. Code § 2-1411.03(3). OHR receives complaints, 4 D.C.M.R. § 705, facilitates mediations, 4 D.C.M.R. § 710, conducts investigations if mediation fails, 4 D.C.M.R. § 711, issues findings, 4 D.C.M.R. § 716, conducts conciliations upon a finding of probable cause, 4 D.C.M.R. § 717, and, if conciliation fails, certifies complaints to the D.C. Commission on Human Rights, which conducts a hearing, 4 D.C.M.R. § 718.

Cases before OHR begin with the submission of a complaint by a person who believes she or he has been subjected to discrimination. The agency’s regulations create a simple process for filing a complaint: “The initial complaint shall be in writing on a form obtained from the Office, and can be filed online through the Office’s website (<http://www.ohr.dc.gov>), via email to [ohr.intake@dc.gov](mailto:ohr.intake@dc.gov), mail or fax.” 4 D.C.M.R. § 705.2. Moreover, the information necessary to initiate a complaint is limited and designed to facilitate the filing by unrepresented persons. Under the agency’s rules, “a complaint shall be deemed sufficient when the Office receives from the person making the charge **a written statement sufficiently precise to identify the parties, and to describe generally the action or practice complained of.**” 4 D.C.M.R. § 705.5 (emphasis added); *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”).

Once a complaint is received, OHR must “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. As discussed in greater detail below, OHR often does not meet the deadlines set out in its Standard Operating Procedures and unnecessarily delays the processing of complaints. It sometimes can take months for OHR to even begin setting up an intake interview.<sup>2</sup>

When an OHR intake specialist processes the intake questionnaire, the intake specialist writes (or rewrites, if the complainant or complainant’s representative provided proposed language) the formal charge that will ultimately be filed with OHR. The charge is the formal document that OHR uses moving forward in its investigation and eventual resolution of the case. During the drafting of the charge, OHR intake specialists sometimes omit entire legal claims and/or crucial facts asserted in the initial submission. For example, in some cases, charges have omitted the identity of respondents or failed to identify the protected category into which the complainant falls. Efforts to ensure the completeness and accuracy of charges are often thwarted

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<sup>2</sup> Attachment B to OHR’s FY20-21 Performance Oversight Questions shows that over 25% of inquiries filed at OHR took longer than 30 days to schedule for an intake interview in FY 2020. In FY 2019, over 65% percent of inquiries filed at OHR took longer than 30 days to schedule for an intake interview. Attachment B, “Key Performance Indicators.”

by the insistence of intake specialists to use their draft of the charge, even if incomplete or deficient. This is true even in cases in which an attorney has drafted the charge. As a result, people seeking relief from the agency may be frustrated in their efforts to address all of the instances of discrimination that they have experienced.

Compounding this problem, there are certain claims within the agency's jurisdiction that it refuses to hear. For example, many claims in housing and employment arise from a practice that has a discriminatory impact based on race or gender. These claims arise under the D.C. Human Rights Act and are within the authority of OHR to resolve. (The OHR regulations "apply to all employers, places of public accommodation, educational institutions, and housing and commercial space subject to the D.C. Human Rights Act of 1977, effective December 13, 1977." 4 D.C.M.R. § 700). However, the agency refuses to accept complaints that assert that the discrimination is based on disparate impact.<sup>3</sup>

There is nothing in the statute or the regulations governing OHR that permit it to refuse to hear and resolve an allegation of discrimination that is within its statutory jurisdiction. In fact, as noted above, the regulations require the initiation of the process when the agency receives "a written statement sufficiently precise to identify the parties, and to describe generally the action or practice complained of." 4 D.C.M.R. § 705.5. Nothing more is required.

The agency may dismiss the complaint if it lacks jurisdiction, 4 D.C.M.R. § 707, or for specified administrative reasons including the lack of cooperation of the complainant, the failure to state a claim, or the fact that the respondent has gone out of business, 4 D.C.M.R. § 708. There is nothing in the regulations that permits a properly asserted claim within the agency's authority to address to be dismissed or rejected.

As a result of advocacy from the Washington Lawyers' Committee and other community partners on this issue, OHR introduced an attorney-drafted charges pilot program in July 2019 ("Pilot Program"). The Pilot 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 publicized, as OHR received fewer than 10 attorney-drafted charges within that time period. Additionally, despite the Pilot Program, OHR continued the practice of rewriting attorney-drafted charges during that period; indeed, a Washington Lawyers' Committee attorney attempting to take advantage of the Pilot Program still had to advocate for OHR to accept her client's charge as drafted by that attorney.

## **B. Delays in Case Processing**

OHR, as an administrative alternative to Court, should provide a remedy that is efficient, effective, and available to claimants who do not have counsel. Lengthy delays in the processing of cases and resolving disputes, especially in those cases that involved basic needs like housing or employment, harm claimants and undermine the mission of the agency.

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<sup>3</sup> Confirmed in meeting with Monica Palacio on March 2, 2021.

The following two cases illustrate the impact of delays by the agency in processing cases. It is important to note that these issues long pre-date the COVID-19 pandemic.

We represent a former janitor who was fired from her job because she refused to have sex with her supervisor. The individual's intake interview at OHR was in July 2019. Despite the fact that her charge of discrimination was drafted by attorneys, OHR delays resulted in the charge not being filed for more than four months, not until the end of December 2019. The mandatory mediation ordered by OHR in April 2020 was unsuccessful, as the former employer did not offer any settlement. The next contact we received from OHR was in September 2020. At the investigator's instruction, we provided OHR with the contact information for a medical provider who would support the complainant's claims, the releases necessary to receive documents from that witness, as well as that witness' contact information so that the OHR investigator could interview the witness. To date, the investigator has never contacted that witness. On February 5, 2021, we finally received a response from the investigator as to the status of the investigation. The investigator told us that it would be at least one additional year before the investigation would be complete, and at that point, OHR would undertake a legal review of the case, which will take additional time. At least two and a half years will have passed between the time that this complainant filed her discrimination charge and the time that OHR makes a determination on her charge.

Since June 2020, we have represented a returning citizen against a large employer for engaging in discriminatory and unlawful hiring practices. It wasn't until more than three months later, in September 2020, that we received a formal request for a rebuttal response from OHR. In that waiting period between June and September, we contacted OHR regarding the delay and were advised: "Please note, OHR has a significant backlog and most cases are a minimum eighteen (18) months out." The cases have not materially moved since that time. As time continues to pass, our client is denied relief that would positively impact her and other returning citizens seeking employment with the company.

These delays render the complaint process ineffective in some cases, make cases harder to pursue because evidence will be lost, and deny much needed remedies in a timely manner.

### **C. OHR Fails to Implement Effective Mediation Programs, Especially for Individuals with Disabilities**

One of the core functions of OHR is to mediate complaints of unlawful discrimination in employment, housing, public accommodations, or educational institutions. D.C. Code §2-1411.03(5). Mediation is supposed to take place before OHR commences a full investigation with the goal of having both parties discuss the issues of the complaint in an effort to reach an agreement that satisfies the interests of all concerned parties. D.C. Code § 2-1403.04(c). Additionally, OHR is responsible for training and overseeing the activities of mediators. D.C. Code § 2-1411.05(a)(4). Yet, despite these affirmative obligations placed on OHR, we have represented clients with disabilities who have not been provided appropriate reasonable accommodations.

For example, we represented a Deaf individual in mediation who did not speak American Sign Language (ASL). She grew up outside of the United States and requires a Certified Deaf

Interpreter who spoke her language in order to effectively communicate. We made specific requests for a certified interpreter and advised the agency that an ASL interpreter would be insufficient.<sup>4</sup> The agency failed to meet the request and provided an ASL interpreter for the mediation. For communication between our lawyers and our client, we brought our own certified interpreter to the mediation, but it would have been inappropriate for that interpreter to both interpret the proceeding and facilitate client/attorney communication. Additionally, the mediator was not trained to protect confidentiality and asked multiple times that the CDI interpreter secured by the Washington Lawyers' Committee interpret for him while he communicated with counsel. Further exacerbating the failure to facilitate communication, the mediator insisted on using a speakerphone to convey the opposing party's position on settlement. While this method may enable a hearing client to participate in the conversation with the mediator and make informed decisions, it was inaccessible to our Deaf client.

At a second mediation at OHR, we represented a client with multiple physical and mental health disabilities who requires the use of a service animal. It quickly became apparent that the mediator did not have sufficient training regarding laws governing service animals. He repeatedly referred to our client's service animal as a "pet" and something the client desired, rather than needed. The statements were distressing to our client and did not assist the parties in reaching an agreement.

For an agency responsible for protecting civil rights laws, including those that prohibit discrimination based on disability, to fail to accommodate complainants in this way is of grave concern. It impacts both the ability to secure relief and calls into question the agency's ability to hold other law violators to account.

#### **IV. Recommendations & Conclusion**

For years, OHR has suffered from poor management and little oversight from the Mayor or Council. We strongly urge the Committee to use its oversight authority to compel the agency to create a functioning case processing and investigative system that is consistent with its mission to "eradicate discrimination, increase equal opportunity, and protect human rights in the District of Columbia." In addition to the Oversight Hearing held on March 5, we encourage the Committee to hold periodic roundtables with stakeholders, including persons who have attempted to resolve disputes before ORH and members of the advocacy community.

In addition, we offer the following specific recommendations:

- (1) Expanding the Attorney-Drafted Charges Pilot Program:** the Council should work with OHR during the budget process to expand the Pilot Program and recommend that the Pilot Program be made permanent to ensure that OHR continues

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<sup>4</sup> CDI certified interpreters are deaf or hard of hearing and have demonstrated knowledge and understanding of interpreting, deafness, the Deaf community, and Deaf culture. Holders have specialized training beyond the training required of a typical ASL interpreter with a National Interpreter Certification and/or experience in the use of gesture, mime, props, drawings and other tools to enhance communication. Holders possess native or near-native fluency in American Sign Language and are recommended for a broad range of assignments where an interpreter who is deaf or hard-of-hearing would be beneficial. Available Certifications, Registry of Interpreters for the Deaf, <https://rid.org/rid-certification-overview/available-certification/>.

to accept attorney-drafted charges. Furthermore, the Pilot Program should be expanded to include attorneys representing clients in all areas in which OHR accepts charges, not just employment and public accommodations.

- (2) **Require OHR to Accept All Complaints Within its Jurisdiction:** Through oversight or the budget process, the Council should ensure that complaints that could and should be resolved by OHR are not rejected at their initiation.
- (3) **Investigate Delays:** the Council should ensure that OHR is developing systems to improve their efficiency and meet the deadlines outlined in its Standard Operating Procedures or to establish case processing deadlines as a matter of law.
- (4) **Training for OHR Staff:** OHR staff needs additional training regarding how to provide reasonable accommodations to all individuals interacting with the Office, interpreter confidentiality, and the rights of individuals who require a service animal. Additionally, staff should receive extensive training on WebEx functionality, which has become even more critical in light of COVID-19. OHR mediators should employ best practices to allow parties to resolve disputes.

The Washington Lawyers' Committee remains dedicated to working with OHR and this Committee to make progress on these issues.