

A pre-hearing conference was held on March 22, 2017, and attended by the Complainant (Ruth Turnquist), her attorney, Earl E. Shamwell, Jr., Esquire, and by the Respondent's counsel, Sharon E. Conners, Esquire. Maryland attorney Sharon R. Herron, Esquire, also participated on the Complainant's behalf by telephone. Attorney Herron indicated that she would enter her appearance in the case and file with the appropriate Maryland court to have Mr. Shamwell admitted *pro hac vice* for this case

All parties agreed to the schedule suggested in the Hearing Examiner's Order of March 3, 2017, and elected to invoke the Rule on Witnesses at the public hearing. The parties did not agree to schedule any further settlement discussions with OHR.

The following schedule was agreed to by all parties and will be the hearing and pre-hearing schedule in this case:

March 30, 2017	Resolution of Mr. Shamwell's Maryland Bar status
May 30, 2017	Completion of Discovery
June 30, 2017	Complainant's submission of pre-hearing statement
July 31, 2017	Respondent's submission of pre-hearing statement
July 31, 2017	Joint pre-hearing submission
September 14, 2017	Hearing

On March 30, 2017, attorney Sharon R. Herron, Esquire, of the Law Offices of Johnny M. Riddick & Associates, filed a formal appearance on behalf of the Complainant (Exhibit 7). She indicated that a "Motion for the Special Appearance of Earl E. Shamwell, Jr., Esquire, will be filed in court on or before April 7, 2017." Her appearance on behalf of the Complainant moots the issue of the Complainant not being represented by a member of the Maryland Bar.

This matter is hereby scheduled for public hearing before the Hearing Examiner on **Thursday, September 14, 2017**, in the 2nd Floor Hearing Room, Stella B. Werner Council Office Building, 100 Maryland Avenue, Rockville, Maryland, at 9:30 a.m., or as soon thereafter as this matter can be heard.

Pursuant to Montgomery County Code Section 2A-6, this hearing notice is being sent by certified mail to the parties and their counsel named herein. It contains the following:

- (a) A copy of the charging documents – *i.e.*, the February 21, 2017 Order from the Case Review Board of MCCHR referring the above-captioned complaint to OZAH for the purpose of conducting a public hearing under the provisions of Montgomery County law (Docket No. 1); the complaint alleging unlawful

discrimination in employment on the basis of age, sex and race (Docket No. 2); the reasonable grounds determination of the OHR Director (Docket No. 3); and the OHR Director's certification that conciliation in OHR has failed and referring the matter to MCCHR (Docket No. 4).

- (b) Time, place and date of hearing.
- (c) That the parties may be represented by counsel or represent themselves (however, the Hearing Examiner notes that corporations must be represented by counsel in most cases. See, e.g., Md. Rule 2-131(a)(2)).
- (d) That the parties have the opportunity to present witnesses, cross-examine witnesses and present supporting documentation.
- (e) That there are pre-hearing procedure requirements as set forth in Montgomery County Code Section 2A-7.
- (f) That the parties may request a continuance of the hearing by written request if made not less than five (5) days prior to the date of hearing.
- (g) That a verbatim record and transcript of the hearing will be made by OZAH.
- (h) That there is a right, subject to the provisions of the state public information law, to inspect and copy at the requesting party's own expense documents of any party, administrative authority or investigating governmental agency involved where such inspection is not otherwise prohibited by law. (1978 L.M.C., ch. 30, § 1.)

For the benefit of the parties, 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, although photographs may be submitted in JPEG or PDF format. These electronic copies

should be submitted on compact discs accompanying the hard copy filings. If necessary, small files may be sent by e-mail (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 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 delivered to OZAH's 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 in an 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, but the parties may request 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, OHR's Determination of reasonable grounds, the Certification to MCCHR based on the failure of conciliation and the Human Rights Commission's referral of the matter to OZAH for a hearing). 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 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 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 an order and recommendation, not a decision in the case. However, Sec. 2A-7(d) of the MCAPA allows a motion proceeding leading to a report and recommendation of a summary decision if warranted.

(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.

So ORDERED, this 7th Day of April, 2017.



Martin L. Grossman
Hearing Examiner
Director, Office of Zoning and Administrative Hearings

Attachment "A" – the February 21, 2017 Order from the Case Review Board of MCCHR referring the above-captioned complaint to OZAH for the purpose of conducting a public hearing (Docket No. 1)

Attachment "B" – the complaint alleging unlawful discrimination in employment (Docket No. 2)

Attachment "C" – the reasonable grounds determination of the OHR Director (Docket No. 3)

Attachment "D" – the OHR Director's certification that conciliation in OHR has failed and referring the matter to MCCHR (Docket No. 4)

Serve (by Certified Mail):

Ruth Turnquist
20424 Apple harvest Circle
Germantown, Maryland 20876

Earl E. Shamwell, Jr., Esquire
1407 Kennedy Street, NW
Washington, DC 20011

Sharon R. Herron, Esquire
Law Offices of Johnny M. Riddick & Associates
505 Capitol Court, NE
Suite 100
Washington, D.C. 20002

Rockville Nursing Home
303 Adclare Road
Rockville, MD 20850

Sharon E. Connors, Esquire
Marks, O'Neill, O'Brien, Doherty & Kelly, P.C.
Suite 305
600 Baltimore Avenue
Towson, MD 21204

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