

## **GUIDE FOR ATTORNEYS**

The Division of Human Rights (DHR) is processing a discrimination complaint involving your client. The DHR is authorized to proceed under the South Dakota Human Relations Act of 1972, codified at SDCL chapter 20-13, and under ARSD 20:03.

Following the filing of a charge an investigator from the DHR notifies both parties that an investigation is underway. If the claim involves the employment practices of an entity employing fifteen (15) or more persons, the claim is also filed with the Federal Equal Employment Opportunity Commission (EEOC) under Title VII of the Civil Rights Act. The DHR is under contract with the EEOC to conduct investigations on such claims. Under the DHR/EEOC contract the DHR is given the right to process the file for the first sixty (60) days after a proper action is filed. Prior to a party's initiating a suit in federal court, the EEOC must issue a right to sue authorization. The DHR and EEOC share jurisdiction if the alleged discrimination has taken place in the past one-hundred-and-eighty (180) days. An alleged act which occurred more than one-hundred-and-eighty (180) days prior to the filing falls exclusively in the jurisdiction of the EEOC.

After receiving the complaint, the Respondent is urged to provide an informal account of the circumstances relating to the complaint, either orally or in written form. Any delay may prove costly, particularly when back pay is involved. The investigator will then conduct informal inquiries of both parties and other witnesses on an individual basis or may schedule a fact-finding conference with all parties present. Statements made at this time are informal and not under oath. The proceedings may be tape recorded for reference purposes. The DHR urges voluntary cooperation from the Respondent but is empowered to subpoena and subpoena duces tecum. Failure of the Charging Party to cooperate fully with the DHR may result in dismissal. After further investigation the DHR will then issue a final determination indicating whether there is probable cause to believe discrimination was present. A finding of no probable cause will result in dismissal of the charges. A no probable cause determination may be appealed to state Circuit Court by the Charging Party. A finding by the DHR of no probable cause in a joint EEOC claim may also be appealed, by the Charging Party, to federal court by first obtaining an authorization to appeal from the EEOC. The federal system allows the award of attorney's fees, which is not authorized in South Dakota state Courts.

Offers of settlement are encouraged and will be entertained at any point in the proceedings. A settlement prior to a final determination is termed a "negotiated settlement" and is considered to be "no fault". Under a negotiated settlement there is no admission of guilt by the Respondent, and the Charging Party waives the right to pursue the matter with the DHR. Upon completion of the terms of the negotiated settlement, the DHR will dismiss the charge. A settlement after a determination of probable cause is termed a "conciliation agreement". Any such settlement must involve the DHR and must be approved by the DHR.

If there has been a probable cause determination but the parties do not settle the claim, the Respondent is then required to file a sworn answer to the charge, which is forwarded to the Commission of Human Rights. At this point the involvement of the DHR ceases and the state Commission of Human Rights may then conduct a de novo public hearing on the matter. The final action of the Commission may be appealed to Circuit Court pursuant to SDCL chapter 1-26. Pursuant to SDCL § 20-13-25.1 either party may elect to proceed by civil action in lieu of a Commission hearing if notice is given no later than twenty (20) days after the DHR issues notice requiring the Respondent to file a sworn answer.