



Pennsylvania Association of REALTORS®

The Voice for Real Estate® in Pennsylvania

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September 20, 1999

**Nancy L. Gippert, Assistant Chief Counsel
Pennsylvania Human Relations Commission
101 South Second Street, Suite 300
PO Box 3145
Harrisburg, PA 17101**

Re: Proposed Rulemaking Relating to Advertising Schedule of Penalties

Dear Ms. Gippert:

On behalf of the 26,000 members of the Pennsylvania Association of REALTORS®, we welcome the opportunity to comment on the proposed rulemaking relating to Advertising Schedule of Penalties published in the August 21, 1999 edition of *The Pennsylvania Bulletin*.

The proposed rulemaking would provide a schedule of penalties, a procedure for their imposition and a procedure for appeal of violations by advertisers and publishers of alleged discriminatory language in published advertisements.

The Pennsylvania Association of REALTORS® does not dispute the need for a citation system, however, PAR does have the following suggestions for improvement.

§45.302. Initial procedure. This Section is unclear with respect to the length of time between publication of an offending advertisement and the issuance of a citation. The Section does provide for procedures when the Commission becomes aware of an unlawful advertisement within 180 of publication, however the Section does not provide for a period of time within which the procedure shall be initiated or concluded.

§45.303(d)(3). Administrative procedures. This Subsection provides that "The party cited shall be advised." To provide greater clarity, the Subsection should read "The party cited shall be advised that the hearing request has been forwarded to a citation officer."

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§45.303(d)(4). Administrative procedures. This Subsection provides that "Staff counsel shall prepare the matter for hearing." Indication of a time within which the hearing will be conducted should be included as there is no provision in the administrative procedures section to provide that a hearing must be conducted within a specific period of time upon receipt of a response to a citation.

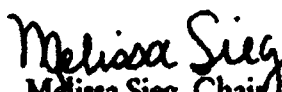
§45.303(d)(4)(f). Administrative procedures. Conduct of a hearing will be governed by "appropriate Commission regulations/requirements or these procedures, or both." This Subsection is unclear as to where one would look to determine the procedures for conduct of a citation hearing.

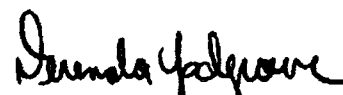
§45.304. Hearing. This Section contains no provision indicating a period of time within which an Order must be issued following a hearing.

§45.305. Appeals. Upon appeal, the Commission shall "in its discretion receive additional evidence." There should be in place standards for consideration by the Commission to guide in the determination of receipt of additional evidence. The Commission should always entertain additional evidence that has bearing on the issue of whether a hearing was conducted fairly and with proper notification, etc.; and when there is newly discovered evidence that could not have been reasonably discovered by the date of the hearing. This Section should clearly indicate that when these matters have been raised, the Commission would take into consideration the additional evidence.

As previously stated, The Pennsylvania Association of REALTORS® does not dispute the need for a citation system to penalize violators of Act 34 of 1997. Implementation of the proposed rulemaking with the above modifications will ensure proper adherence to the law. We appreciate the opportunity to share our views with you on this important subject. Please do not hesitate to contact us if you have any questions or concerns about the real estate industry.

Sincerely,


Melissa Sieg, Chair
License Law Sub-Committee


Derenda Updegrave, Director
Government Affairs



PENNSYLVANIA NEWSPAPER

A S S O C I A T I O N

**To: Nancy L. Gippert, Assistant Chief Counsel
Human Relations Commission**

**From: Kara A. Dolphin, Director of Government Affairs
Pennsylvania Newspaper Association**

Date: September 20, 1999

**Re: Pennsylvania Newspaper Association Comments Regarding Proposed Rulemaking
Pursuant to Section 9.3 of the Pennsylvania Human Relations Act (43 P.S. § 959.3)**

The Pennsylvania Newspaper Association (Association) herewith submits its comments in response to the Pennsylvania Human Relations Commission's proposed rulemaking as published in the *Pennsylvania Bulletin* at Volume 29, No. 34 (August 21, 1999).

PNA is a nonprofit trade association representing more than 300 newspapers in the Commonwealth. Newspapers play a vital role in disseminating social and political information to Pennsylvania citizens and advertising the goods and services of Pennsylvania businesses. The real estate industry is particularly dependent on newsprint advertisements for marketing commercial and residential properties.

The Association's primary mission is to represent the interests of the newspaper industry and defend the principles of the First Amendment to the United States Constitution. However, both the Association and the industry as a whole recognize the importance of fair housing and lending practices and work every day to eliminate the taint of discrimination from residential and commercial property advertisements. The Association has developed a close and cordial working relationship with state regulators in support of a good faith effort by newspapers to comply with fair housing requirements. Over the past two years, the Association has appreciated the willingness of the Pennsylvania Human Relations Commission (Commission) to accept cooperation and comment and provide guidance to publishers regarding its statement of policy on housing and commercial property advertising words, phrases, and symbols.

The Association's chief concern about the proposed rulemaking is its potential to replace an industry-supported, cooperative initiative to eradicate unlawful advertising practices through education with an adversarial, punitive approach to regulation. The Association fears that the resources of the Commission will become so focused on administering the proposed citation procedure, and the attentions of the newspaper and real estate industries will become so devoted to risk avoidance that there will no longer be a place for a positive, education-oriented approach to the elimination of unlawful advertising.

Under 43 P.S. § 959.3, the scope of the Commission's adoption of civil penalties is limited to a schedule of penalties for violation of Section (5)(h)(5) (43 P.S. § 955(h)(5)) by the advertiser or publisher in the instance where the complainant does not take action to secure housing accommodations or financing and is not denied housing accommodations or financing based on the alleged discriminatory language in the advertisement. Under the proposed

rulemaking (§ 45.302), the Commission inappropriately expands this allowance, by permitting sources other than aggrieved persons seeking housing or commercial property or financing to initiate the citation procedure. The General Assembly's intent was to permit those who have standing, those who are directly impacted by the advertisement, to notify the Commission whom at that point can determine if there was an infraction of the Act.

Furthermore, the U.S. Court of Appeals for the Third Circuit in *The Fair Housing Council of Suburban Philadelphia v. Montgomery Newspapers*, No. 97-1051, held that in order to establish standing, an organization must point to a "concrete and demonstrable injury to [its] activities. Thus, the court requires an alleged injury to occur from the conduct alleged. Thus there must be a causal nexus between the advertisement and the injury alleged. The court determined that The Fair Housing Council did not have standing to sue. Similarly, the Commission and its housing staff do not have standing to issue citations when they are not directly injured by the advertisement.

Under 2 Pa. C.S.A. § 102, an agency has the power to promulgate reasonable regulations. The Commission's proposed rulemaking falls short of this mark in that it gives the Commission broader citation authority than contemplated by the General Assembly.

In terms of particular language, the Association has specific difficulty with the following sections:

45.302 Initial Procedure

The Commission should have a specific time limitation on the commencement of the citation process, such as 20 days from the date an aggrieved person notifies the Commission of a violation. "Within 180 days from the date of publication" allows for an excessive amount of time to elapse for an aggrieved party to bring an unlawful advertisement to the Commission's attention.

45.302(1)

Once the housing staff has been notified by an aggrieved party of an unlawful advertisement, the staff should be required to complete the Commission Citation Form, process the citation, and forward the citation to the parties within a reasonable period of time. This time period should be noted in this section.

45.302(3)(iii)(4)

This subsection should specify that the respondent has 15 "business" days to respond "from the date the citation is received" instead of "15 days of service of the citation".

45.302(5)

This subsection should outline the additional penalties that would result from the failure to pay the civil penalty.

45.304(5) Hearing

Order the appropriate equitable relief as authorized by the act. The Association recommends that the Commission provide greater specificity in the regulations regarding the specific forms of relief contemplated by this section. Requiring all advertisers and publishers to attend a hearing in Harrisburg is unduly burdensome. The Commission's unwillingness to hold hearings in other venues can have no effect but to compel admissions of violation from regulated persons who do not have the time or resources to travel across the state from the east or west to defend a summary citation.

The Association appreciates the opportunity to comment on the proposed rulemaking. Please feel free to contact me if you have any questions regarding these points. You can reach me directly at (717) 703 -3077.