

NATIONAL COMMITTEE
FOR
SEXUAL CIVIL LIBERTIES

Thomas F. Coleman, Esq.
Co-Chairman

Dr. Arthur C. Warner
Co-Chairman

1800 North Highland Avenue, Suite 106
Los Angeles, California 90028

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October 3, 1979

Re: Statewide Housing Protection
Now Available to California Gays

NEWS

FOR IMMEDIATE RELEASES

In a precedent setting move, the State of California, Division of Fair Employment Practices has agreed to investigate and remedy housing discrimination cases against gay persons. This is the first time that gay tenants in California will have a state agency to assist them in sexual orientation discrimination cases.

This decision resulted from extensive negotiations with Governor Brown's office and other administrative officials by Mr. Paul D. Hardman of San Francisco and Mr. Thomas F. Coleman, a Los Angeles attorney.

In 1978 a decision was made by the Division of Fair Employment Practices not to handle gay housing cases, although it appeared that the Division had jurisdiction to do so. In August, 1979, this problem was discovered by Ms. Susan McGrievy, staff attorney for the Los Angeles Gay Community Services Center, when the Division refused to process several housing cases which she had referred to the Division for investigation. That same month the National Committee intervened and brought the matter to the attention of Mr. J. Anthony Kline, the Governor's Legal Affairs Secretary. Kline, Hardman, and Coleman then worked out a solution with Ms. Joanne A. Lewis, Chief of the Division of Fair Employment Practices.

Upon learning of the decision to handle gay cases, Thomas F. Coleman, Co-chair of the National Committee commented, "This is another example of the firm commitment of the Brown administration to equality under the law for all regardless of sexual orientation. The intervention and assistance from the Governor's office probably saved us three years of litigation over this issue. Now that we have statewide protection in gay housing discrimination cases, we should refer such cases to the Division of Fair Employment Practices for resolution

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF FAIR EMPLOYMENT PRACTICES

455 GOLDEN GATE AVENUE, SAN FRANCISCO

Address reply to: FEPC, P.O. Box 603, San Francisco, CA 94101

Administrative Office 557-2000

Complaint Section 557-2005



September 26, 1979

Mr. Thomas F. Coleman
Co-Chairman
National Committee for
Sexual Civil Liberties
1800 North Highland Avenue, Suite 106
Los Angeles, CA 90028

Dear Mr. Coleman:

Enclosed is a copy of Directive Transmittal No. 044, Revised.

Sincerely,


Joanne A. Lewis
Chief

JAL/clu

Enclosure

cc: Paul Hardman (w/Enclosure)



DIRECTIVE TRANSMITTAL

Transmittal Number

044, Revised

Date of Distribution

September 25, 1979

1. SUBJECT. UNRUH ACT AND GROOMING STANDARD CASES.
2. PURPOSE. To create a procedure for screening grooming standard and Unruh Act cases to identify those requiring active involvement by the Division.
3. ORIGINATOR. Office of the Chief.
4. RESPONSIBILITIES. Consultants, senior consultants, area administrators, attorneys, Assistant Chiefs, and Chief.
5. DISTRIBUTION. Consultants, senior consultants, area administrators, attorneys, clerical office supervisors, clericals, and headquarters administrative staff.

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6. BACKGROUND. The Unruh Civil Rights Act (Civil Code Section 51) expressly prohibits arbitrary discrimination by business establishments, including those selling or renting real property, on the basis of sex, race, color, religion, ancestry, and national origin. The Act has also been interpreted by the California Supreme Court to prohibit arbitrary discrimination by business establishments on any basis, whether or not that basis is enumerated in the Unruh Act itself. Thus, along with discrimination on the basis of race, sex, and the other listed bases, the Unruh Act covers, for example, discrimination in housing against people with children or criminal records, discrimination in restaurants against barefoot people, and discrimination in private hospitals against poor people.

In November, 1977, the Commission determined formally that it would exercise jurisdiction over sex discrimination cases involving employers' grooming standards based on male and female stereotypes. Examples of such grooming standards are requirements that women wear bras or dresses, and requirements that men have short hair or not wear beards or mustaches.

The Division has determined that it does not have the enforcement resources necessary fully to pursue all grooming standard cases or all of the infinite variety of possible Unruh Act cases, but it also recognizes that many such cases involve serious discriminatory practices, in light of the underlying purposes of the FEP and Unruh Acts, and therefore warrant full prosecution. This Directive establishes a consistent procedure for identifying these cases.

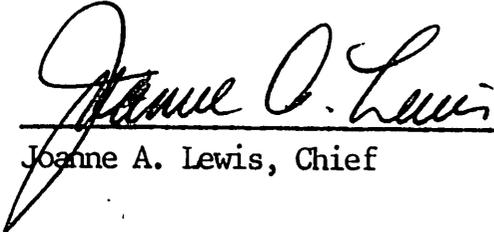
7. PROCEDURE.

- a. Intake and Referral. With the exception for physical handicap complaints (see 8.) the Division will accept complaints within our Unruh Act jurisdiction, i.e., complaints alleging discrimination on bases other than those enumerated in the Act or in the FEP Act or Rumford Act. This includes, for example, complaints alleging discrimination in housing against families with children, discrimination in housing against gay people, discrimination in restaurants against barefoot people, discrimination in housing against people who are welfare recipients, are mentally retarded or have pets, and discrimination in housing against people with criminal records or poor credit ratings. The complaint should be accepted and docketed in the regular fashion. The complaint should be served on the Respondent with the short form service letter in Attachment A to this Directive (Form F-100-68-1). A regular case file should be assembled and sent immediately to the intake consultant's area administrator.
- b. Screening. The area administrator will put the case on the agenda of the next executive staff meeting by submitting a copy of the complaint and a written summary of any relevant additional information on the case that does not appear in the complaint. The executive staff will discuss the case and the Chief will make a final decision whether to pursue the case.

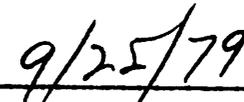
The criteria to be used in this screening include the seriousness of the challenged practice in light of the central purposes of the FEP and Unruh Acts, the severity of the injury suffered by the complainant due to the challenged practice, the impact on available enforcement resources of pursuing the complaint and others like it, and the potential impact of the Division's decision on others subject to the same practice. The executive staff and the Chief will endeavor to apply these and similar criteria uniformly over time in order to develop a consistent set of priorities for the Division's treatment of Unruh and grooming standard cases.

- c. Further Action. If a decision is made to pursue a case, the compliance staff will proceed with the case in the ordinary fashion. If the case is not to be pursued, it should be closed under closure category 14, and the complainant should be sent, by regular, first class mail, the appropriate closure letter in Attachment B to this Directive, along with the appropriate right-to-sue notice.

- d. Current Cases. On the effective date of this Directive, the Division will have on file Unruh Act complaints on the bases enumerated in the Act. These cases need not be submitted for screening and should be handled in the usual manner.
8. EXCEPTION FOR PHYSICAL HANDICAP CASES. The Division is not permitted to accept complaints under the Unruh Act on the basis of physical handicap. A California court has ruled that Civil Code Sections 54 and 54.1 (prohibiting discrimination in public accommodations against the physically disabled) and Sections 54.3 and 55 (permitting court actions to remedy such discrimination) provide the sole remedy for such discrimination. This limitation should be explained to any charging party attempting to file a physical handicap complaint under the Unruh Act, and that person should also be given a copy of the hand-out in Attachment C to this Directive, and informed orally that Civil Code Section 55 permits the person to file a private court action to remedy their grievance.
9. APPROVAL.



Joanne A. Lewis, Chief



Date

JAL/clu

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Transmittal No. 044, Revised
September 25, 1979

ATTACHMENT A

Case No. _____

Case Title _____

NOTICE OF FILING OF DISCRIMINATION COMPLAINT

Enclosed is a copy of a complaint that has been filed with the Division of Fair Employment Practices in accordance with Section 1421 of the Labor Code. This constitutes service of the complaint pursuant to Section 1421.2 of the Labor Code.

This agency does not request any action by you at this time. You will be notified by the Division when any further official action is taken.

Senior Consultant:

Signature

Return Receipt Requested

Enclosure