

TITLE 910 CIVIL RIGHTS COMMISSION

ARTICLE 1. PRACTICE AND PROCEDURE BEFORE THE COMMISSION

Rule 1. Definitions (Repealed)

(Repealed by Civil Rights Commission; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1400)

Rule 1.5. Definitions

910 IAC 1-1.5-1 Applicability

Authority: IC 22-9-1-6

Affected: IC 22-9-1-3; IC 22-9-1-4

Sec. 1. The definitions in this rule apply throughout this article unless otherwise indicated. Any term used in this rule that is defined in the Indiana Civil Rights Law shall be given the meaning provided under the Indiana Civil Rights Law unless otherwise indicated. *(Civil Rights Commission; 910 IAC 1-1.5-1; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1384; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)*

910 IAC 1-1.5-2 “Administrative law judge” defined

Authority: IC 22-9-1-6

Affected: IC 22-9-1-3; IC 22-9-1-4

Sec. 2. “Administrative law judge” means a commissioner or an agent of the commission designated or delegated by the chair or vice chair to:

(1) conduct public hearings; and

(2) rule on prehearing motions and petitions.

(Civil Rights Commission; 910 IAC 1-1.5-2; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1385; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

910 IAC 1-1.5-3 “Administrative Orders and Procedures Act” defined

Authority: IC 22-9-1-6

Affected: IC 4-21.5-1; IC 22-9-1-3; IC 22-9-1-4

Sec. 3. “Administrative Orders and Procedures Act” means IC 4-21.5-1 as amended from time to time. *(Civil Rights Commission; 910 IAC 1-1.5-3; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1385; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)*

910 IAC 1-1.5-4 “Chair” defined

Authority: IC 22-9-1-6

Affected: IC 22-9-1-3; IC 22-9-1-4

Sec. 4. “Chair” means the person elected chair of the commission in accordance with the provisions of the Indiana Civil Rights Law. *(Civil Rights Commission; 910 IAC 1-1.5-4; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1385; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)*

910 IAC 1-1.5-5 “Commission” defined

Authority: IC 22-9-1-6

Affected: IC 22-9-1-3; IC 22-9-1-4

Sec. 5. “Commission” means the civil rights commission. *(Civil Rights Commission; 910 IAC 1-1.5-5; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1385; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)*

910 IAC 1-1.5-6 “Commissioner” defined

Authority: IC 22-9-1-6

Affected: IC 22-9-1-3; IC 22-9-1-4

Sec. 6. “Commissioner” means an individual appointed as a commissioner pursuant to the Indiana Civil Rights Law. (*Civil Rights Commission; 910 IAC 1-1.5-6; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1385; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 1-1.5-7 “Day” defined

Authority: IC 22-9-1-6

Affected: IC 22-9-1-3; IC 22-9-1-4

Sec. 7. “Day” means a calendar day unless the context clearly requires otherwise, provided, however, that when any period in which action must be taken under this article expires on a Saturday, Sunday, national or state holiday, or a day upon which the commission is closed for business, such period shall be extended to the next business day, provided further, that all periods of notice or time for taking action prescribed by this article or the Indiana Civil Rights Law shall be calculated by excluding the day from which the period begins to run and including the day on which the notice is effective or the action must be taken. (*Civil Rights Commission; 910 IAC 1-1.5-7; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1385; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 1-1.5-8 “Finding of no probable cause” defined

Authority: IC 22-9-1-6

Affected: IC 22-9-1-3; IC 22-9-1-4

Sec. 8. “Finding of no probable cause” means a written finding issued by the director, deputy director, or commission that probable cause does not exist to believe that an unlawful discriminatory practice occurred. (*Civil Rights Commission; 910 IAC 1-1.5-8; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1385; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 1-1.5-9 “Finding of probable cause” defined

Authority: IC 22-9-1-6

Affected: IC 22-9-1-3; IC 22-9-1-4

Sec. 9. “Finding of probable cause” means a written finding issued by the director, deputy director, or commission that probable cause exists to believe that a discriminatory practice occurred. (*Civil Rights Commission; 910 IAC 1-1.5-9; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1385; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 1-1.5-10 “Indiana Civil Rights Law” defined

Authority: IC 22-9-1-6

Affected: IC 22-9

Sec. 10. “Indiana Civil Rights Law” means IC 22-9-1, IC 22-9-5, IC 22-9-6, and IC 22-9-8 as amended from time to time. (*Civil Rights Commission; 910 IAC 1-1.5-10; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1385; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 1-1.5-11 “Order by default” defined

Authority: IC 22-9-1-6

Affected: IC 22-9-1-3; IC 22-9-1-4

Sec. 11. “Order by default” means an order issued by the commission, after proper notice, against a respondent that has failed to answer a complaint within the time provided by the Indiana Civil Rights Law or this article, against a party that has failed to appear at a public hearing, or against a party that has otherwise failed to comply with the Indiana Civil Rights Law or this article. An order by default shall have the same scope and effect as a final order issued by the commission subsequent to a public hearing. (*Civil Rights Commission; 910 IAC 1-1.5-11; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1385; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

25 IR 942)

910 IAC 1-1.5-12 “Party” defined

Authority: IC 22-9-1-6

Affected: IC 22-9-1-3; IC 22-9-1-4

Sec. 12. “Party” means a complainant, a respondent, an intervenor, or, where appropriate, the director or deputy director of the commission, acting in his or her official capacity. *(Civil Rights Commission; 910 IAC 1-1.5-12; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1386; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)*

910 IAC 1-1.5-13 “Presiding officer” defined

Authority: IC 22-9-1-6

Affected: IC 22-9-1-3; IC 22-9-1-4

Sec. 13. “Presiding officer” means the administrative law judge, or, if more than one (1) administrative law judge has been appointed for a given complaint, it means that administrative law judge selected by the chair or the vice chair to preside over a public hearing and shall rule on all prehearing motions and petitions. In those instances where a presiding officer has not been appointed, the chair or the vice chair shall perform all the duties of the presiding officer until such time as a presiding officer is duly appointed. *(Civil Rights Commission; 910 IAC 1-1.5-13; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1386; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)*

910 IAC 1-1.5-14 “Probable cause” defined

Authority: IC 22-9-1-6

Affected: IC 22-9-1-3; IC 22-9-1-4

Sec. 14. “Probable cause” means such an apparent state of facts established by personal knowledge or by information from others reasonably accepted as true, as would lead a person of normal intelligence and prudence to believe that an unlawful discriminatory practice has occurred. *(Civil Rights Commission; 910 IAC 1-1.5-14; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1386; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)*

910 IAC 1-1.5-15 “Respondent” defined

Authority: IC 22-9-1-6

Affected: IC 22-9-1-3; IC 22-9-1-4

Sec. 15. “Respondent” means any person against whom a complaint has been filed. *(Civil Rights Commission; 910 IAC 1-1.5-15; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1386; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)*

910 IAC 1-1.5-16 “Vice chair” defined

Authority: IC 22-9-1-6

Affected: IC 22-9-1-3; IC 22-9-1-4

Sec. 16. “Vice chair” means the person elected vice chair of the commission in accordance with the provisions of the Indiana Civil Rights Law. *(Civil Rights Commission; 910 IAC 1-1.5-16; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1386; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)*

Rule 2. General Information

910 IAC 1-2-1 Applicability of rules; jurisdiction of commission (Repealed)

Sec. 1. *(Repealed by Civil Rights Commission; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1400)*

910 IAC 1-2-2 Authority to promulgate rules (Repealed)

Sec. 2. *(Repealed by Civil Rights Commission; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1400)*

910 IAC 1-2-3 Complaints; amendment

Authority: IC 22-9-1-6

Affected: IC 22-9-1-11

Sec. 3. (a) Any person claiming to be aggrieved by a discriminatory practice or act contrary to the provisions of the Indiana Civil Rights Law may make, sign, and file a complaint with the commission.

(b) The director or deputy director, in his or her official capacity, may initiate a complaint when he or she has reason to believe that an act of discrimination has been committed against a person or a class of people in order to vindicate the policy of the state as defined in the Indiana Civil Rights Law.

(c) Where a complaint is filed in accordance with this article, and the director or deputy director, in the course of the investigation, determines that relief for more than the individual complainant is appropriate, he or she, in his or her official capacity, may file a separate complaint with respect to the acts of discrimination against such other individuals. Such separate complaint may be consolidated with the original or amended complaint for purposes of all subsequent proceedings or may be docketed separately at the discretion of the director or deputy director. *(Civil Rights Commission; Rule 2, Sec 2.3; filed Mar 29, 1974, 4:16 p.m.: Rules and Regs. 1975, p. 197; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1386; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)*

910 IAC 1-2-4 Complaints filed with other agencies; federal and local findings

Authority: IC 22-9-1-6

Affected: IC 22-9-1

Sec. 4. (a) A complaint deferred to the commission by the United States Equal Employment Opportunity Commission (EEOC) or by the United States Department of Housing and Urban Development (HUD) pursuant to federal civil rights laws shall be deemed filed with the commission as of the date it was received by EEOC or HUD, provided the complaint conforms to the requirements of the Indiana Civil Rights Law.

(b) A complaint filed with a local commission, office, or agency created by the authority of the Indiana Civil Rights Law, shall be deemed a complaint filed with the commission as of the date it was received by the local commission, office, or agency, provided the complaint conforms to the requirements of the Indiana Civil Rights Law.

(c) The director or deputy director may issue a finding adopting the result reached by EEOC or HUD concerning a complaint that has been filed with one (1) of those federal agencies and with the commission, provided that there is no substantial difference between state and federal law as such laws pertain to the facts at issue in the complaint. A finding of no probable cause issued by the director or deputy director pursuant to this section may be reviewed by the commission pursuant to the same procedures set forth under this article for reviewing findings of no probable cause issued by the director or deputy director in cases investigated by the commission. The only issues subject to review are whether there is a material difference between state and federal law, and whether any such material difference requires additional investigation or the issuance of a finding different from that issued by EEOC or HUD. *(Civil Rights Commission; Rule 2, Sec 2.4; filed Mar 29, 1974, 4:16 p.m.: Rules and Regs. 1975, p. 197; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1386; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)*

910 IAC 1-2-5 Filing complaints

Authority: IC 22-9-1-6

Affected: IC 22-9-1

Sec. 5. (a) Complaints may be filed with the commission at its Indianapolis office either by personal delivery or by mail. The commission's staff may provide assistance in drafting and filing a complaint.

(b) The complaint shall be deemed filed as of the date of either of the following:

(1) The postmark, if the complaint is filed by first class mail, or its receipt at the commission's offices if no postmark is visible.

(2) Receipt at the commission's office if the complaint is filed by means other than first class mail.

(Civil Rights Commission; Rule 2, Sec 2.5; filed Mar 29, 1974, 4:16 p.m.: Rules and Regs. 1975, p. 198; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1387; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

910 IAC 1-2-6 Withdrawal of complaint; notice

Authority: IC 22-9-1-6

Affected: IC 22-9-1

Sec. 6. Withdrawal Of A Complaint. (A) Who May Withdraw. A complaint, or any part thereof, may be withdrawn only upon written request as hereinafter set forth:

(i) If the request for withdrawal is made before the case has been set for hearing, and notice thereof sent, the Complaint may be withdrawn at the discretion of the Complainant.

(ii) If the request for withdrawal is made after the case has been set for hearing, the written consent of a majority of the Commissioners shall be obtained.

(B) Notice Of Withdrawal. All parties shall be notified of a withdrawal. *(Civil Rights Commission; Rule 2, Sec 2.6; filed Mar 29, 1974, 4:16 pm: Rules and Regs. 1975, p. 198; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)*

910 IAC 1-2-7 Answers; relief; time limits; default; replies

Authority: IC 22-9-1-6

Affected: IC 22-9-1

Sec. 7. (a) A respondent may choose not to file an answer and, in the alternative, may grant relief to a complainant within twenty (20) days after service upon the respondent of a copy of the complaint. If a complainant accepts the offer of relief and the relief offered is acceptable to the commission as a just resolution of the complaint, such complaint will be dismissed subject to full performance by the respondent of the terms of the respondent's proposed offer.

(b) A respondent may answer by filing an answer to the complaint in accordance with this section. An answer shall state in short and plain terms the defenses to each claim asserted and shall admit or deny the allegations set forth in the complaint. If, in good faith, the respondent intends to deny all the allegations in the complaint, the respondent must do so subject to verification under oath. In lieu of a general denial, the respondent may:

(1) specifically deny designated allegations or paragraphs; or

(2) generally deny all allegations, except such allegations and paragraphs as expressly admitted.

If the respondent lacks knowledge or information sufficient to form a belief as to the truth of an allegation, the respondent shall so state and such statement will be considered a denial. If the respondent intends to deny only a part or qualify an allegation, the respondent shall specify so much of it as is true and material and deny the remainder. All denials shall meet the substance of the allegations denied. Allegations in a complaint, except those pertaining to amount of damages, are admitted when not denied in an answer.

(c) An answer shall be in writing and signed by the respondent or the respondent's duly authorized representative and shall be filed with the commission within twenty (20) days after service upon the respondent of a copy of the complaint.

(d) If a respondent fails to grant immediate relief pursuant to subsection (a) and the respondent fails to file an answer to the complaint within twenty (20) days after service upon such respondent of a copy of the complaint, the commission will deem this failure to answer an admission to the truth of the allegations set forth in the complaint and, upon its own motion or the motion of any party in accordance with this article, the commission may issue an order by default.

(e) Any new allegation raised in an answer shall be deemed denied without the necessity of a reply.

(f) Upon application, the chair, vice chair of the commission, or, if both are unavailable, any commissioner, for good cause shown, may extend the time within which the answer may be filed. *(Civil Rights Commission; Rule 2, Sec 2.7; filed Mar 29, 1974, 4:16 p.m.: Rules and Regs. 1975, p. 199; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1387; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)*

910 IAC 1-2-8 Amendments to pleadings

Authority: IC 22-9-1-6

Affected: IC 22-9-1-6

Sec. 8. (a) At any time prior to the issuance of the notice of a prehearing conference, a complaint, or any part thereof, may be amended as a matter of a right by the complainant. Otherwise, a complainant may amend the complaint only by leave of the commission, and such leave shall be given when justice so requires.

(b) A respondent may amend his or her answer as a matter of right at any time prior to the issuance of notice of a prehearing conference. Otherwise, a respondent may amend its answer only by leave of the commission, and such leave shall be given when justice so requires.

(c) Each party shall be served with a copy of each amendment to a pleading.

(d) When issues not raised in the pleadings filed by the parties are heard by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendments of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after final order, but failure to so amend shall not affect the adjudication of the hearing. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the pleadings, the presiding officer may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be served thereby and the objecting party fails to show that the admission of such evidence would prejudice such party in maintaining a claim or defense on the merits. The presiding officer may grant a continuance to enable the objecting party to meet such evidence. (*Civil Rights Commission; Rule 2, Sec 2.8; filed Mar 29, 1974, 4:16 p.m.: Rules and Regs. 1975, p. 199; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1388; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 1-2-9 Ruling on prehearing motions and petitions

Authority: IC 22-9-1-6

Affected: IC 22-9-1-6

Sec. 9. When a party files a prehearing motion or petition, and a presiding officer has not been appointed, the chair, vice chair, or, if both are unavailable, any commissioner, shall rule on the motion or petition. If a presiding officer has been appointed pursuant to this article, the presiding officer shall rule on the motion or petition. (*Civil Rights Commission; Rule 2, Sec 2.9; filed Mar 29, 1974, 4:16 p.m.: Rules and Regs. 1975, p. 200; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1388; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 1-2-10 Motion for a more definite statement

Authority: IC 22-9-1-6

Affected: IC 22-9-1-6

Sec. 10. (a) Any person named as a respondent may file a motion in writing within ten (10) days after service of a complaint requesting that the allegations in the complaint be made more definite and certain. Such motion shall set forth the deficiencies in the complaint. If a presiding officer:

(1) has not been appointed under this article, the chair, vice chair, or, if both are unavailable, any commissioner shall:

(A) rule on the motion; and

(B) if the motion is granted, fix the time within which the complainant shall comply; or

(2) has been appointed under this article, the presiding officer shall:

(A) rule on the motion; and

(B) if the motion is granted, fix the time within which the complainant shall comply.

(b) The motion to make more specific shall be utilized only to clarify the issues sufficiently to enable the moving party to prepare his or her defense to the allegations raised in the complaint. (*Civil Rights Commission; Rule 2, Sec 2.10; filed Mar 29, 1974, 4:16 p.m.: Rules and Regs. 1975, p. 200; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1388; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

Rule 3. Processing a Complaint

910 IAC 1-3-1 Docketing; notice; selection of investigator

Authority: IC 22-9-1-6

Affected: IC 4-21.5-3-1

Sec. 1. (a) Each complaint shall be given a case number in sequential order by date of filing with the commission.

(b) Each respondent shall be served with a copy of the complaint and a statement of the respondents' procedural rights and obligations. Service shall be deemed sufficient if accomplished by any means by which subpoenas may be served in accordance with this article. Service shall also be deemed sufficient if made by publication in compliance with IC 4-21.5-3-1, as amended from time to time.

(c) The director or deputy director may conduct the investigation of a complaint or assign all or any part thereof to a member of the staff. (*Civil Rights Commission; Rule 3, Sec 3.1; filed Mar 29, 1974, 4:16 p.m.: Rules and Regs. 1975, p. 201; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1389; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 1-3-2 Investigation and finding; appeal; dismissal

Authority: IC 22-9-1-6

Affected: IC 22-9-1-2; IC 22-9-1-3

Sec. 2. (a) If a respondent chooses to defend against a complaint, the director shall initiate a full investigation of such complaint. Based on the results of the investigation, the director shall determine whether probable cause exists.

(b) If the director or deputy director issues a finding of probable cause or if the commission issues a finding of probable cause pursuant to an appeal under subsection (d), notice of such finding shall be served on all parties and a presiding officer shall be appointed.

(c) If the director or deputy director issues a finding of no probable cause, notice of such finding shall be served upon all parties.

(d) The director or deputy director shall issue a written finding that complainant did not proceed if the director or deputy director finds that dismissal of the complaint will serve the public interest and further finds that, after reasonable effort by the commission's staff:

(1) the complainant has unreasonably failed to cooperate with the commission's staff; or

(2) the commission's staff has been unable to locate the complainant.

(e) The director or deputy director shall issue a finding of lack of jurisdiction if the commission lacks jurisdiction over:

(1) a person necessary to the just adjudication of the case;

(2) the subject matter of the complaint; or

(3) the particular case.

(f) The director or deputy director may issue a finding of administrative dismissal if the director or deputy director finds that dismissal of a complaint will serve the public interest and further finds that:

(1) each respondent in a case has received a discharge of its debts under the United States Bankruptcy Code and that such discharge is effective to discharge all monetary claims under the Indiana Civil Rights Law;

(2) there is no substantial likelihood of payment of relief that has been or may be ordered by the commission; or

(3) the complainant has failed to present a claim with substantial likelihood of merit.

(g) A party who is aggrieved by a finding of the director or the deputy director, other than a finding of probable cause, may file, within fifteen (15) days after receipt of notice of such finding, a written appeal of such finding with the commission. Notice of the right to appeal and of the aggrieved party's right to submit additional documentary evidence shall be contained in the notice of each appealable finding issued by the director or deputy director.

(h) The chair shall appoint a commissioner to review and rule on each appeal. The reviewing commissioner shall base his or her decision on the investigation results submitted by the director or deputy director as supplemented by any other documentary evidence submitted by the parties, including the following:

(1) If the reviewing commissioner, or the commission, determines that a finding of no probable cause might be reversed, each respondent shall be notified of such determination and allowed fifteen (15) days to object in writing. If the reviewing commissioner, after due consideration of each respondent's written objections, determines that the finding of no probable cause should be reversed, the case shall be processed as if an original finding of probable cause had been made.

(2) If the reviewing commissioner determines that the finding of no probable cause should be upheld, the complaint shall be referred to the commission on such reviewing commissioner's recommendation that the commission adopt the finding of no probable cause. In the event of such a recommendation by the reviewing commissioner, the commission shall consider only evidence submitted to the reviewing commissioner in ruling on an appeal of the director's or deputy director's finding of no probable cause.

(3) If the commission adopts the finding of no probable cause recommended by the reviewing commissioner, the complaint shall be dismissed and the parties shall be served with notice of such finding.

(4) A reviewing commissioner or the commission may decline to adopt or recommend a finding of no probable cause under this section in favor of referral for further investigation specifying in writing the investigatory efforts desired. Such a referral shall have the effect of setting aside the director's or deputy director's finding of no probable cause pending the further investigation requested after which the director or deputy director may once again make a determination whether probable cause exists, taking any new evidence into consideration.

(5) A commissioner who reverses a finding of no probable cause shall take no further part in the proceedings on the complaint that was the subject of the appeal; provided, however, that if disqualification of a commissioner who has reversed a finding of no probable cause would deprive the commission of a quorum, such commissioner need not be disqualified.

(i) The issuance of the following shall result in the dismissal of a complaint, with prejudice, upon the exhaustion of the administrative appeal process:

(1) Finding of no probable cause.

(2) Finding that complainant did not proceed.

(3) Finding of lack of jurisdiction.

(4) Finding of administrative dismissal.

(Civil Rights Commission; Rule 3, Sec 3.2; filed Mar 29, 1974, 4:16 p.m.: Rules and Regs. 1975, p. 201; filed Jun 26, 1984, 3:13 p.m.: 7 IR 1399; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1389; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

910 IAC 1-3-3 Conciliation conference

Authority: IC 22-9-1-6

Affected: IC 22-9-1-6

Sec. 3. Upon written request of a respondent, or upon agreement of all parties, the director or the director's designee may schedule a conciliation conference. If a case is scheduled for a conciliation conference, all parties must attend such conference and participate in good faith. All settlement discussions made in the course of a conciliation conference scheduled by the director shall be confidential, and no admissions made against interest during the course of such conciliation conference shall be admissible as evidence in a public hearing held by the commission or in any other legal proceeding. *(Civil Rights Commission; Rule 3, Sec 3.3; filed Mar 29, 1974, 4:16 p.m.: Rules and Regs. 1975, p. 202; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1390; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)*

910 IAC 1-3-4 Consent agreements

Authority: IC 22-9-1-6

Affected: IC 22-9-1-2; IC 22-9-1-3

Sec. 4. The director or such person as the director designates may sign a consent agreement with regard to settlement in any case. Such agreement, however, is not final unless approved by the commission. A consent agreement approved by the commission shall be binding on the commission and shall be enforceable as a final order by the commission against any party signing such agreement. The commission may enforce such agreement by action brought in a circuit or superior court upon a showing that such party:

(1) has failed to comply with one (1) or more terms or conditions of the consent agreement;

(2) is subject to the commission's jurisdiction; and

(3) resides or transacts business within the county in which the petition for enforcement is brought.

(Civil Rights Commission; Rule 3, Sec 3.4; filed Mar 29, 1974, 4:16 p.m.: Rules and Regs. 1975, p. 203; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1391; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

910 IAC 1-3-5 Appointment of administrative law judges and presiding officer; appointments by presiding officer

Authority: IC 22-9-1-6

Affected: IC 22-9-1-6

Sec. 5. (a) When the director or deputy director has issued a finding of probable cause or a motion has been filed prior to the

issuance of a finding by the director or deputy director, the chair or, if the chair is unavailable, a commissioner, shall appoint an administrative law judge or judges to conduct a public hearing and to rule on all prehearing motions and petitions. When more than one (1) administrative law judge is appointed for a public hearing, the chair shall designate which administrative law judge shall be the presiding officer. The parties shall be notified of such appointment.

(b) The presiding officer may:

(1) appoint a settlement judge to preside over and conduct settlement conferences and negotiations under such conditions as may be imposed by the presiding officer; and

(2) upon agreement of the parties, appoint a conciliator.

(Civil Rights Commission; Rule 3, Sec 3.5; filed Mar 29, 1974, 4:16 p.m.: Rules and Regs. 1975, p. 204; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1392; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

910 IAC 1-3-6 Election of forum

Authority: IC 22-9-1-6

Affected: IC 22-9-1-6

Sec. 6. The parties to a case before the commission may elect, in writing, to proceed before a circuit or superior court of competent jurisdiction. An election to proceed in circuit or superior court is effective only if all parties to a case timely file a written election. If all parties have filed a timely election to proceed in circuit or superior court, the commission shall dismiss the case, without prejudice. Such dismissal shall be sufficient to exhaust all administrative remedies in the case. *(Civil Rights Commission; 910 IAC 1-3-6; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1392; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)*

Rule 4. Discovery

910 IAC 1-4-1 Discovery

Authority: IC 22-9-1-6

Affected: IC 34-5-1-1

Sec. 1. (a) Any party to the proceeding shall be entitled to conduct discovery upon issuance of a finding of probable cause. When any party has filed a motion prior to the issuance of a finding of probable cause, all parties are entitled to conduct discovery relevant to the issues raised by such motion. At any other time, the parties may conduct discovery only by leave of the presiding officer, or, if a presiding officer has not been appointed, by any commissioner. Discovery shall be conducted pursuant to the rules of procedure governing discovery set forth in the Indiana Rules of Trial Procedure. Upon the request of any party, the presiding officer, or, if no presiding officer has been appointed, any commissioner, shall, or upon a motion may, issue subpoenas and discovery orders, including protective orders, in accordance with the Indiana Rules of Trial Procedure. The presiding officer, or, if a presiding officer has not been appointed, any commissioner, may limit the conduct of discovery as justice requires. Nothing contained in this section limits the commission's authority to issue a subpoena at any time.

(b) Subpoenas and other discovery orders issued by the presiding officer, a commissioner, or the commission may be enforced in circuit or superior court in the manner set forth in the Administrative Orders and Procedures Act.

(c) No deposition, request for discovery, or response to a request for discovery under the Indiana Rules of Trial Procedure shall be filed with the commission unless:

(1) a motion is filed pursuant to Rule 26(c) or Rule 37 of the Indiana Rules of Trial Procedure and the original deposition, request for discovery, or response to a request for discovery is necessary to enable the commission to rule; or

(2) a party desires to use the deposition or request for discovery or response thereto for evidentiary purposes at hearing or in connection with a motion and the presiding officer permits such usage.

(d) Subject to Rule 30(e) of the Indiana Rules of Trial Procedure, the original of a deposition shall be:

(1) delivered by the reporter to the party taking it; and

(2) maintained by that party until filed with the commission or until the case has been finally resolved and the parties have exhausted all rights to appeal.

(e) The original of any request for discovery or response thereto shall be maintained by the party originating the request or response until filed with the commission or until the case has been finally resolved and the parties have exhausted all rights to appeal.

(f) In the event it is made to appear to the satisfaction of the commission that the original of a deposition or request for discovery or response thereto cannot be filed with the commission when required, the commission may allow use of a copy instead of the original.

(g) The filing of any deposition shall constitute publication. (*Civil Rights Commission; Rule 4; filed Mar 29, 1974, 4:16 p.m.; Rules and Regs. 1975, p. 204; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1392; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

Rule 5. Service of Process

910 IAC 1-5-1 Filing

Authority: IC 22-9-1-6

Affected: IC 22-9-1-3

Sec. 1. (a) Complaints filed with the commission shall be filed as provided in this article. All other pleadings, motions, petitions, requests, and other instruments shall be filed by delivering in person during regular business hours, or by mailing the original instrument and three (3) copies thereof to the office of the commission at Indianapolis. All such instruments shall be signed by the party on whose behalf they are filed or by such party's attorney. Where, pursuant to this article, a complainant has elected to have the case in support of the complaint presented by the commission's staff attorney, such instruments may be signed by the commission's staff attorney on behalf of the complainant. All such instruments shall show the party's address and phone number and the address and phone number of the attorney filing the instrument.

(b) All notices, orders, and other documents provided for in this article shall be served on all parties. If a party is represented in the proceedings by an attorney of record, all notices, orders, and other documents shall be served on such party's attorney with a copy of such document sent to the party.

(c) When a commission staff attorney has appeared for purposes of presenting the case in support of the complaint, all notices, orders, and other documents shall be served on the commission's staff attorney with a copy sent to the complainant. Service may be by regular mail or personal delivery unless otherwise ordered.

(d) Service shall be deemed complete upon mailing; however, whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after the service of a notice or other document upon him or her by mail, three (3) days shall be added to the prescribed period. Proof of mailing of any document shall constitute prima facie proof of service of such document. A signed certificate affirming that the signatory placed a document in the mail shall constitute proof of mailing of such document for purposes of this article.

(e) In all cases in which the commission is the moving party, all notices provided for in this section shall be in writing, and shall be given at least five (5) days prior to the event of which notice is given, unless a longer period of notice is prescribed in this article. Every notice shall set forth a statement of the fact or law involved to advise the person notified of the matters at issue to be heard or determined by the commission together with the time and place of any hearing or the time before which any action called for or permitted by the notice must be taken. Such statement may be informal and need not conform to the requirements of a pleading in court.

(f) An application to the commission to take any action or to enter any order after the filing of the initial complaint or answer shall be by motion that, unless made during a hearing, shall:

- (1) be made in writing;
- (2) state specifically the grounds therefore; and
- (3) set forth the action or order sought.

Each motion made in writing, or reduced to writing at the request of the commission, shall be filed with the commission and notice thereof shall be served upon all parties. (*Civil Rights Commission; Rule 5, Sec 5.1; filed Mar 29, 1974, 4:16 p.m.: Rules and Regs. 1975, p. 205; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1393; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 1-5-2 Subpoenas

Authority: IC 22-9-1-6

Affected: IC 22-9-1-6

Sec. 2. (a) The commission may issue subpoenas on its own motion or upon request of any party.

(b) A subpoena issued by the commission may be served by a sheriff, the sheriff's deputy, a party, or any person. Service of

a subpoena upon a person named in the subpoena shall be made by delivering a copy thereof to the person named in the subpoena, or an individual acting in a representative capacity for such person, by:

- (1) sending a copy of the subpoena by registered or certified mail or other public means by which a written acknowledgement of receipt may be requested and obtained to his or her residence, place of business, or place of employment;
- (2) delivering a copy of the subpoena personally;
- (3) leaving a copy of the subpoena at his or her dwelling house or usual place of abode; or
- (4) serving his or her agent as provided by rule, statute, or valid agreement.

Whenever service is made under subdivision (3) or (4), the person making the service shall also send a copy of the subpoena by first class mail to the last known address of the person being served and this fact shall be shown upon the return.

(c) Subpoenas issued by the commission shall be signed by an individual commissioner under the seal of the commission and shall state the following:

- (1) The name of the commission.
- (2) The title of the action without naming more than the first named complainant and respondent.
- (3) The docket number.
- (d) A subpoena may command the person named in the subpoena to appear and give testimony at a time and place as specified.
- (e) A subpoena may command the person named in the subpoena to produce books, papers, documents, or tangible things as designated.

(f) The chair, vice chair, or, if both are unavailable, any commissioner, or, if a presiding officer has been appointed pursuant to this article, the presiding officer, upon a timely motion may:

- (1) quash or modify the subpoena if it is unreasonable or oppressive; or
- (2) condition denial of the motion to quash upon the advancement by the person on whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(g) If any person named in a subpoena shall fail to appear before the commission, to answer any question, or to produce any book, record, paper, or other document as commanded by such subpoena, or shall otherwise disobey such subpoena, such contumacy or refusal shall constitute a contempt. The commission may apply for a citation of contempt to the circuit or superior court or judge thereof, in the county in which:

- (1) the hearing is held;
- (2) the person subpoenaed resides or transacts business; or
- (3) the books, records, or documents are kept or are located.

(h) Nothing in this article shall be construed as making public or requiring the production of records or information made privileged or confidential by law.

(i) When a subpoena is served by the sheriff or the sheriff's deputy, his or her return shall be proof of service. When served by any other person, service must be shown by affidavit. No fees or costs for the service of a subpoena shall be collected or charged as costs except when service is made by the sheriff or the sheriff's deputy. (*Civil Rights Commission; Rule 5, Sec 5.2; filed Mar 29, 1974, 4:16 p.m.: Rules and Regs. 1975, p. 206; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1393; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

Rule 6. Default

910 IAC 1-6-1 Failures constituting default; default orders

Authority: IC 22-9-1-6

Affected: IC 22-9-1-6

Sec. 1. When a party has:

- (1) failed to plead or otherwise defend as provided by this article; or
- (2) failed to appear for a public hearing after proper notice;

such party is in default. Upon a showing that a party is in default, the commission may enter an order by default in accordance with the procedures set forth in the Administrative Orders and Procedures Act. (*Civil Rights Commission; Rule 6, Sec 6.1; filed Mar 29, 1974, 4:16 p.m.: Rules and Regs. 1975, p. 207; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1394; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 1-6-2 Default orders against governmental organizations

Authority: IC 22-9-1-6

Affected: IC 22-9-1-6

Sec. 2. An order by default may be entered against a governmental organization. (*Civil Rights Commission; Rule 6, Sec 6.2; filed Mar 29, 1974, 4:16 p.m.: Rules and Regs. 1975, p. 207; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1395; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 1-6-3 Vacation of default order

Authority: IC 22-9-1-6

Affected: IC 22-9-1-6

Sec. 3. Setting Aside Default. Upon application within a reasonable time and upon good cause shown, the Chairman of the Commission may set aside on Order by Default. (*Civil Rights Commission; Rule 6, Sec 6.3; filed Mar 29, 1974, 4:16 pm: Rules and Regs. 1975, p. 208; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 1-6-4 Default by governmental organization

Authority: IC 22-9-1-6

Affected: IC 22-9-1-6

Sec. 4. Order Against Governmental Organizations. An Order by Default may be entered against a governmental organization. (*Civil Rights Commission; Rule 6, Sec 6.4; filed Mar 29, 1974, 4:16 pm: Rules and Regs. 1975, p. 208; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

Rule 7. Parties

910 IAC 1-7-1 Substitution of parties; relation back

Authority: IC 22-9-1-6

Affected: IC 22-9-1-6

Sec. 1. (a) Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the person against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against the person to be brought in by amendment, such person:

(1) has received such notice of the institution of the action that he or she will not be prejudiced in maintaining a defense on the merits; and

(2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him or her.

(b) With respect to a governmental organization, the requirements of subsection (a) may be satisfied by:

(1) in the case of a state or governmental organization, delivery or mailing of process to the attorney general or to a governmental executive; or

(2) in the case of a local governmental organization, delivery or mailing of process to:

(A) its attorney as provided by statute;

(B) a governmental executive thereof; or

(C) the officer holding the office if suit is against the officer or an office.

(*Civil Rights Commission; Rule 7, Sec 7.1; filed Mar 29, 1974, 4:16 p.m.: Rules and Regs. 1975, p. 208; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1395; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 1-7-2 Intervention

Authority: IC 22-9-1-6

Affected: IC 22-9-1-6

Sec. 2. (a) The director, or the deputy director, in his or her official capacity, may intervene as a party in any case following the issuance of a finding of probable cause. The director or deputy director may also intervene as a party in any case in which a motion has been filed prior to the issuance of a finding of probable cause or a finding of no probable cause for the limited purpose of addressing or contesting such prefinding motion. Nothing in this section shall be construed as limiting the right of the director or deputy director to initiate or join any proceeding or case as provided elsewhere in this article.

(b) The Administrative Orders and Procedures Act shall govern all petitions for intervention by any person other than the director or the deputy director. (*Civil Rights Commission; Rule 7, Sec 7.2; filed Mar 29, 1974, 4:16 p.m.: Rules and Regs. 1975, p. 209; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1395; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 1-7-3 Joinder of parties; indispensable parties

Authority: IC 22-9-1-6

Affected: IC 22-9-1-6

Sec. 3. (a) A person who is subject to service or process shall be joined as a party before the commission if:

(1) in such person's absence, complete relief cannot be accorded among those already parties; or

(2) such person claims an interest relating to the subject of the action and is so situated that the disposition of the action in his or her absence may:

(A) as a practical matter, impair or impede his or her ability to protect that interest; or

(B) leave any of the persons already parties subject to substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of such absent person's claimed interest.

If such a person has not been so joined, the presiding officer shall order that he or she be made a party. If, in accordance with the foregoing, a person should join as a complainant, but refuses to do so, such person may be made a respondent.

(b) Notwithstanding subsection (a), when a person described in clause (A) [*sic.*] is not made a party, the presiding officer may treat the absent person as not indispensable and allow the action to proceed without such absent person, or the presiding officer may treat such absent person as indispensable and dismiss the action if such person is not subject to process. In determining whether or not a person is indispensable, the presiding officer shall consider the following factors:

(1) The extent to which a judgment rendered in the person's absence might be prejudicial to him or her or to those already parties.

(2) The extent to which, by protective provisions in the final order, by the shaping of relief, or by other measures the prejudice can be lessened or avoided.

(3) Whether a final order rendered in the person's absence will be adequate.

(4) Whether the complainants will have an adequate remedy if the complaint is dismissed for nonjoinder.

(*Civil Rights Commission; Rule 7, Sec 7.3; filed Mar 29, 1974, 4:16 p.m.: Rules and Regs. 1975, p. 209; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1395; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

Rule 8. Practice Before the Commission

910 IAC 1-8-1 Representation of parties

Authority: IC 22-9-1-6

Affected: IC 22-9-1-6

Sec. 1. (a) Any person may appear before the commission, or presiding officer on his or her own behalf, or by an attorney admitted to practice and in good standing before the bar of any of the United States or the District of Columbia.

(b) A complainant may appear before the commission, or presiding officer, in person, by an attorney, or by a legal intern pursuing an education in a legal institution and engaged in a program certified by the supreme court of Indiana. In lieu of the options provided in this subsection, the case in support of the complaint may be presented by the commission's staff attorney. In such case, the commission's staff attorney represents the public interest and does not enter into an attorney-client relationship with a complainant. In the event the commission's staff attorney presents the case in support of the complaint and the complainant's interest conflicts with the public interest, the commission's attorney is bound to pursue the public interest.

(c) In the event a complainant appears in person or by an attorney or a legal intern pursuing an education in a legal institution and engaging in a program certified by the supreme court of Indiana, the commission's staff attorney may present the case in support

of the complaint for purposes of furthering the public interest. (*Civil Rights Commission; Rule 8, Sec 8.1; filed Mar 29, 1974, 4:16 p.m.: Rules and Regs. 1975, p. 210; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1396; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 1-8-2 Venue

Authority: IC 22-9-1-6

Affected: IC 22-9-1-6

Sec. 2. It is the policy of the commission to maintain an objective neutral forum equally accessible to all participants in the proceeding before the commission. In order to preserve this policy, hearings shall be held in Indianapolis unless otherwise ordered by the commission. (*Civil Rights Commission; Rule 8, Sec 8.2; filed Mar 29, 1974, 4:16 p.m.: Rules and Regs. 1975, p. 210; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1396; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

Rule 9. Pre-Hearing Conference

910 IAC 1-9-1 Prehearing conference; report; continuing duty to make discovery

Authority: IC 22-9-1-6

Affected: IC 22-9-1

Sec. 1. (a) In the event that a public hearing is required under this article, the presiding officer may direct the parties, the attorneys for the parties, and, where appropriate, the commission's staff attorney to appear before him or her for a prehearing conference to consider the following:

- (1) The simplification of the issues.
 - (2) The necessity or desirability of amendments to the pleadings.
 - (3) The possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof.
 - (4) A limitation of the number of expert witnesses.
 - (5) An exchange of names of witnesses to be called during the hearing and the general nature of their expected testimony.
 - (6) Such other matters as may aid in the disposition of the action.
- (b) Unless otherwise ordered by the commission, a prehearing conference may be called at any time after the issuance of a finding of probable cause.

(c) Where a party is represented by counsel, at least one (1) attorney planning to take part in the hearing shall appear for such party and participate in the prehearing conference. Where, pursuant to this article, a complainant has elected to have the case in support of the complaint be presented by the commission's staff attorney, the commission's staff attorney may appear at the prehearing conference on behalf of such complainant. However, when a party chooses to proceed without counsel before the commission at a final hearing, that party shall appear personally at the prehearing conference.

(d) Unless otherwise ordered by the presiding officer, all attorneys who are required to participate in the prehearing conference shall meet and confer at least three (3) days prior to the prehearing conference, for the following purposes:

- (1) Each attorney shall mark for identification and provide opposing counsel an opportunity to inspect and copy all exhibits which he or she expects to introduce at the hearing. Numbers or marks placed on such exhibits shall be prefixed with the symbol "P/H/C", denoting its prehearing conference designation. When the exhibit is introduced at the hearing of the case, the prehearing conference designation will be stricken. The exhibits must also indicate the party identifying such exhibits. Exhibits of such a nature as to prohibit or make impracticable their production at the prehearing conference shall be identified and notice given of their intended use. Necessary arrangements must be made to afford opposing counsel an opportunity to examine such exhibits.
- (2) The parties shall prepare a written stipulation with reference to all exhibits exchanged or identified. The stipulation shall:
 - (A) contain all agreements of the parties with reference to the exchanged and identified exhibits; and
 - (B) set forth, without limitation, the following:
 - (i) The agreement of the parties with reference to the authenticity of the exhibits.
 - (ii) The admissibility of such exhibits as evidence.
 - (iii) The use of such exhibits in opening statements.
 - (iv) The provisions made for the inspection of identified exhibits.

The original of the exhibit stipulations shall be presented to the presiding officer at the prehearing conference.

(3) The parties shall stipulate in writing with reference to all facts and issues not in genuine dispute. The original of the stipulations shall be presented to the presiding officer at the time of the prehearing conference.

(4) Attorneys for each of the parties shall furnish opposing counsel with a written list of the names and addresses of all witnesses then known. The original of each witness list shall be presented to the presiding officer at the time of the prehearing conference.

(5) If a party, other than a complainant who has elected to have the case in support of the complaint be presented by the commission's staff attorney, is not represented by counsel, he or she shall represent himself or herself at such a conference. The possibility of compromise settlement shall be fully discussed and explored.

(e) Each attorney shall completely familiarize himself or herself with all aspects of the case in advance of the conference of attorneys and shall be prepared to enter into stipulations with reference to as many facts and issues and exhibits as possible.

(f) It shall be the duty of counsel for the parties to arrange for the conference of attorneys at least ten (10) days in advance of the prehearing conference unless waived by the presiding officer.

(g) If, after the conference of the attorneys and before the prehearing conference, counsel discovers additional information required to be disclosed at the conference of attorneys, this information shall immediately be furnished to opposing counsel. The original of any such disclosures shall be presented to the presiding officer at the prehearing conference.

(h) If, following the prehearing conference or during hearing, counsel discovers additional exhibits or the names of additional witnesses, the same information required to be disclosed at the conference of attorneys shall immediately be furnished to opposing counsel. The original of any disclosures shall immediately be filed with the commission and shall indicate the date it was furnished to opposing counsel.

(i) If necessary or advisable, the presiding officer may adjourn the prehearing conference from time to time or may order additional prehearing conferences.

(j) The presiding officer shall issue a written order that:

(1) recites the action taken at each prehearing conference;

(2) recites the amendments allowed to the pleadings;

(3) recites the agreements made by the parties as to any of the matters considered; and

(4) limits the issues before the commission to those not disposed of by admission or agreement at the prehearing conference.

Such order shall control the subsequent course of action unless modified thereafter to prevent manifest injustice. At the start of the hearing, after witnesses have been sworn and preliminary motions considered, the presiding officer may read into the record the order regarding the scope of the hearing. Objections to the order may be noted on the record for appeal purposes. (*Civil Rights Commission; Rule 9, Sec 9.1; filed Mar 29, 1974, 4:16 p.m.: Rules and Regs. 1975, p. 210; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1396; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

Rule 10. Notice of Hearing

910 IAC 1-10-1 Notice of hearing

Authority: IC 22-9-1-6

Affected: IC 22-9-1

Sec. 1. (a) If, pursuant to this article, a hearing is required, the complaint shall be set for hearing by the presiding officer, or, if no presiding officer has been appointed, by the director or deputy director. Notice thereof shall be served upon all parties.

(b) All notices of hearing shall state the date, time, place of hearing, and that parties shall appear with or without counsel at the hearing to answer the complaint and submit testimony with respect to the alleged discriminatory practice. All notices shall advise each party that the failure to appear will result in an adverse order by default pursuant to this article.

(c) Notice of hearing shall be delivered or mailed no less than fifteen (15) days prior to the date of the hearing. (*Civil Rights Commission; Rule 10, Sec 10.1; filed Mar 29, 1974, 4:16 p.m.: Rules and Regs. 1975, p. 213; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1398; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 1-10-2 Continuances

Authority: IC 22-9-1-6

Affected: IC 22-9-1-6

Sec. 2. Upon application, the chair, vice chair, or, if both are unavailable, any commissioner for good cause shown may extend the date on which a hearing has been set. If a presiding officer has been appointed pursuant to this article, the presiding officer shall rule on such application. (*Civil Rights Commission; Rule 10, Sec 10.2; filed Mar 29, 1974, 4:16 p.m.: Rules and Regs. 1975, p. 213; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1398; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

Rule 11. Hearings

910 IAC 1-11-1 Rules of practice governing hearings

Authority: IC 22-9-1-6

Affected: IC 22-9-1-6

Sec. 1. (a) All parties to the proceeding may appear in person or by counsel and shall be allowed to present and cross examine witnesses and to submit evidence.

(b) No evidence shall be received at any hearing except upon reasonable opportunity for all parties to be present. Each party shall, unless excused by the presiding officer, be present in person at each hearing and may be represented by counsel if he or she desires.

(c) The commission shall conduct its hearings in an informal manner in accordance with the Administrative Orders and Procedures Act.

(d) The presiding officer may, among other things:

- (1) administer oaths and affirmations;
- (2) issue subpoenas;
- (3) rule on offers of proof and receive relevant oral or documentary evidence;
- (4) take or cause depositions to be taken;
- (5) conduct conferences for the settlement or simplification of the issues by consent of the parties; and
- (6) dispose of procedural motions and similar matters.

(e) The presiding officer may, within his or her discretion, order the separation of witnesses.

(f) The presiding officer may exclude from the hearing room or from further participation in the proceeding, any person, except a party, who engages in improper conduct before the presiding officer.

(g) All hearings of the commission under this article shall be open to the public.

(h) The presiding officer may grant a continuance on the motion of either party, for good cause shown. If a continuance is granted, costs incurred on account of the continuance may be assessed against the party moving for the continuance at the discretion of the presiding officer.

(i) The presiding officer may at any time order a continuance upon his or her own motion if the interests of justice so require. When all parties are present, such oral notice shall constitute final notice of such continued hearing.

(j) At any hearing upon a complaint or upon any matter connected therewith, evidence shall be admissible as to any retaliatory action against any person because:

- (1) he or she filed the complaint, which is the basis for the hearing;
- (2) he or she testified at any hearing before the commission in connection with such complaint; or
- (3) he or she assisted the commission in any way in connection with its investigation of the complaint.

Such evidence shall be admissible in the discretion of the presiding officer, whether or not allegations of such retaliatory acts are contained in the complaint. The presiding officer shall give the respondent such opportunity to prepare a defense to previously undisclosed allegations of retaliation as justice requires, and for that purpose the presiding officer may continue such hearing. (*Civil Rights Commission; Rule 11, Sec 11.1; filed Mar 29, 1974, 4:16 p.m.: Rules and Regs. 1975, p. 213; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1398; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 1-11-2 Reopening hearings

Authority: IC 22-9-1-6

Affected: IC 22-9-1-6

Sec. 2. Motion To Reopen Hearing. (A) Reopening Hearings. At any time after a hearing has been closed, but prior to a final determination, the Commission may on its own motion, or upon motion by any party, reopen the proceeding to receive further

evidence or argument. (*Civil Rights Commission; Rule 11, Sec 11.2; filed Mar 29, 1974, 4:16 pm: Rules and Regs. 1975, p. 215; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 1-11-3 Briefs; proposed findings, conclusions, and order

Authority: IC 22-9-1-6

Affected: IC 22-9-1-6

Sec. 3. Briefs And Post Hearing Procedure. (A) Who May File. Briefs may be filed by a party, or any interested person, either before or during the course of a public hearing, or within such time thereafter as the Presiding Officer shall designate. Failure to file a brief shall in no way prejudice the rights of any party.

(B) At The Close Of Hearing. At the close of the public hearing the Presiding Officer may order the parties to submit a suggested decision to the Commission. A suggested decision shall include suggested findings of fact, conclusions of law, and the final order by the Commission which the party desires. (*Civil Rights Commission; Rule 11, Sec 11.3; filed Mar 29, 1974, 4:16 pm: Rules and Regs. 1975, p. 215; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

Rule 12. Orders (Repealed)

(*Repealed by Civil Rights Commission; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1400*)

Rule 13. Judicial Review (Voided)

NOTE: Voided by P.L.14-1994, SECTION 10, effective January 1, 1994.

Rule 14. Revocation or Suspension of Licenses

910 IAC 1-14-1 License suspension or revocation; notice; hearing

Authority: IC 22-9-1-6

Affected: IC 22-9-1-6

Sec. 1. Notice To Licensee And Licensing Agency. (A) Procedure. Any licensee of the State of Indiana who is found to have committed a Discriminatory Practice shall be put on notice by the order of the Commission that failure to comply with its final order will subject said licensee to the possible suspension or revocation of such license. The licensing agency shall be given notice of the Commission's determination, and upon failure of the licensee to comply with the Commission's final order, the Commission shall request the licensing agency to conduct a hearing on the matter of whether or not such licensee shall continue to be licensed. (*Civil Rights Commission; Rule 14, Sec 14.1; filed Mar 29, 1974, 4:16 pm: Rules and Regs. 1975, p. 218; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

Rule 15. Construction of Regulations

910 IAC 1-15-1 Construction of rules; severability

Authority: IC 22-9-1-6

Affected: IC 22-9-1-6

Sec. 1. How Construed And Partial Invalidity. (A) Broadly. These regulations [910 IAC 1] shall be broadly construed to accomplish the purposes of the Law and the policies of the Commission.

(B) Partial Invalidity. If any provision of these rules [910 IAC 1] or the application of a provision to any person or circumstances shall be held invalid, the remainder of these rules [910 IAC 1] or the application of a rule to persons or circumstances other than those as to which it is held invalid shall not be affected thereby. (*Civil Rights Commission; Rule 15, Sec 15.1; filed Mar 29, 1974, 4:16 pm: Rules and Regs. 1975, p. 218; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

Rule 16. Complainants

910 IAC 1-16-1 Duties

Authority: IC 22-9-1-6

Affected: IC 22-9-1-6

Sec. 1. (a) Each complainant has the duty to diligently prosecute his or her case before the commission. Such duty includes, without limitation, the following obligations:

- (1) To promptly notify the commission of any change in address or telephone number.
- (2) To provide in good faith truthful answers to all questions from any member of the commission's staff pursuant to the conduct of an investigation by the commission.
- (3) To provide any and all documents within his or her control that are requested by any member of the commission's staff and are reasonably related to the conduct of an investigation by the commission.
- (4) To execute any documents requested by any member of the commission's staff that are reasonably necessary to the conduct of an investigation by the commission, including, without limitation, documents authorizing the release of confidential medical information.
- (5) To claim any and all certified or registered mail from the commission.
- (6) To respond, in a timely manner, to any and all requests by members of the commission's staff that are reasonably necessary to the conduct of an investigation by the commission.

(b) Failure by a complainant to fulfill his or her duty to diligently prosecute a complaint may result in issuance of a finding that complainant did not proceed and a dismissal of the complaint with prejudice, in accordance with this article. (*Civil Rights Commission; 910 IAC 1-16-1; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1399; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

Rule 17. Telephonic Hearings

910 IAC 1-17-1 Telephonic hearings

Authority: IC 22-9-1-6

Affected: IC 22-9-1-6

Sec. 1. The commission, in its discretion, may hold a public hearing by telephone on the issue of whether an order of the commission should be set aside on grounds that a party did not receive sufficient notice of a finding, notice, order, or other document. The commission shall not exercise its discretion to hold a hearing telephonically where to do so would unduly prejudice a party. (*Civil Rights Commission; 910 IAC 1-17-1; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1399; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 1-17-2 Procedures

Authority: IC 22-9-1-6

Affected: IC 22-9-1-6

Sec. 2. (a) The commission shall provide all parties with notice that a hearing will be held telephonically at least ten (10) business days prior to the scheduled hearing date. Such notice shall include the following:

- (1) Notification of the right to object to a telephonic hearing within five (5) business days of the date of receipt of such notice of telephonic hearing.
- (2) Instructions as to the means and manner by which the telephonic hearing will be conducted.

(b) All witnesses for a telephonic hearing must be present at the offices of the commission or at the location of the party participating by telephone. The presiding officer or the commission shall advise all participants that the proceedings will be recorded. The presiding officer or the commission shall permit each party a reasonable opportunity to question any witness testifying via telephone for the purpose of verifying the identity of such witness. In order for documentary evidence to be admitted at a telephonic hearing, it must be delivered to the commission at least five (5) business days prior to the telephonic hearing and be otherwise admissible under this article and the Administrative Orders and Procedures Act.

(c) Except as expressly provided in this section, telephonic hearings shall be subject to the same rules governing other public hearings under this article. (*Civil Rights Commission; 910 IAC 1-17-2; filed Feb 7, 2000, 3:15 p.m.: 23 IR 1400; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

ARTICLE 2. FAIR HOUSING COMPLAINTS

Rule 1. General Information

910 IAC 2-1-1 Scope

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 1. (a) It is the policy of the ICRC to provide for fair housing throughout the state of Indiana. No person shall be subjected to discrimination because of race, color, religion, sex, handicap, familial status, or national origin in the sale, rental, or advertising of a dwelling, in the provision of brokerage services, or in the availability of a residential real estate related transaction.

(b) This article provides the ICRC's interpretation of the coverage and application of IC 22-9.5 regarding discrimination related to the sale or rental of a dwelling, the provision of services in connection therewith, and the availability of a residential real estate related transaction. (*Civil Rights Commission; 910 IAC 2-1-1; filed Aug 20, 1993, 5:00 p.m.: 17 IR 11; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 2-1-2 Definitions

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 2. The following definitions apply throughout this article:

(1) "Director" means the director of the Indiana civil rights commission or a designee.

(2) "ICRC" means the Indiana civil rights commission.

(3) "Handicap" or "handicapped" means disabled or disability.

(*Civil Rights Commission; 910 IAC 2-1-2; filed Aug 20, 1993, 5:00 p.m.: 17 IR 12; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

Rule 2. Discriminatory Housing Practices

910 IAC 2-2-1 Real estate practices prohibited

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5-5

Sec. 1. (a) This rule provides ICRC's interpretation of conduct that is unlawful housing discrimination under IC 22-9.5-5.

(b) It shall be unlawful to do the following:

(1) Refuse to sell or rent a dwelling after a bona fide offer has been made, refuse to negotiate for the sale or rental of a dwelling because of race, color, religion, sex, familial status, or national origin, or discriminate in the sale or rental of a dwelling because of handicap.

(2) Discriminate in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with the sale or rental, because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Engage in any conduct relating to the provision of housing which otherwise makes unavailable or denies dwellings to persons because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

(5) Represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that a dwelling is not available for sale or rental when such dwelling is in fact available.

(6) Engage in blockbusting practices, as described in section 7 of this rule, in connection with the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

(7) Deny access to, or membership or participation in, or discriminate against any person in his or her access to, or

membership or participation in, any multiple-listing service, real estate brokers' association, or other service organization or facility relating to the business of selling or renting a dwelling or in the terms or conditions or membership or participation, because of race, color, religion, sex, handicap, familial status, or national origin.

(c) The application of IC 22-9.5 with respect to any person with a handicap is discussed in 910 IAC 2-3. (*Civil Rights Commission; 910 IAC 2-2-1; filed Aug 20, 1993, 5:00 p.m.: 17 IR 12; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 2-2-2 Unlawful refusal to sell, rent, or negotiate for the sale or rental

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 2. (a) It shall be unlawful for a person to refuse:

(1) to sell or rent a dwelling to a person who has made a bona fide offer because of race, color, religion, sex, familial status, or national origin; or

(2) to refuse to negotiate with a person for the sale or rental of a dwelling because of race, color, religion, sex, familial status, or national origin.

(b) It shall be unlawful for a person to discriminate against any person in the sale or rental of a dwelling because of handicap.

(c) Prohibited actions under this section include, but are not limited to, to *[sic.]* the following:

(1) Failing to accept or consider a bona fide offer because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Refusing to sell or rent a dwelling to, or to negotiate for the sale or rental of a dwelling with, any person because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Imposing different sales prices or rental charges for the sale or rental of a dwelling upon any person because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Using different qualification criteria, applications, or sale or rental standards or procedures such as:

(A) income standards;

(B) application requirements;

(C) application fees;

(D) credit analyses;

(E) sale or rental approval procedures; or

(F) other requirements;

because of race, color, religion, sex, handicap, familial status, or national origin.

(5) Evicting tenants because of their race, color, religion, sex, handicap, familial status, or national origin or because of the race, color, religion, sex, handicap, familial status, or national origin of a tenant's guest.

(*Civil Rights Commission; 910 IAC 2-2-2; filed Aug 20, 1993, 5:00 p.m.: 17 IR 12; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 2-2-3 Discrimination in terms, conditions, privileges, services, and facilities

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 3. (a) It shall be unlawful to impose different terms, conditions, or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Prohibited actions under this section include, but are not limited to, the following:

(1) Using different provisions in a lease or contract of sale, such as those relating to rental charges, security deposits, and terms of a lease and those relating to down payment and closing requirements because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Failing or delaying maintenance or repairs of sale or rental dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Limiting the use of privileges, services, or facilities associated with a dwelling because of race, color, religion, sex, handicap, familial status, or national origin or an owner, tenant, or person associated with him or her.

(5) Denying or limiting services or facilities in connection with the sale or rental of a dwelling because a person failed or refused to provide sexual favors.

(Civil Rights Commission; 910 IAC 2-2-3; filed Aug 20, 1993, 5:00 p.m.: 17 IR 13; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

910 IAC 2-2-4 Other prohibited sale and rental conduct

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 4. (a) It shall be unlawful:

(1) to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying, or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns; or

(2) to discourage or obstruct choices in a community, neighborhood, or development;

because of race, color, religion, sex, handicap, familial status, or national origin.

(b) It shall be unlawful to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to any person because of race, color, religion, sex, handicap, familial status, or national origin.

(c) Prohibited actions under section 1 of this rule, which are generally referred to as unlawful steering practices, include, but are not limited to, the following:

(1) Discouraging any person from inspecting, purchasing, or renting a dwelling because of race, color, religion, sex, handicap, familial status, or national origin or because of the race, color, religion, sex, handicap, familial status, or national origin of any person in a community, neighborhood, or development.

(2) Discouraging the purchase or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development.

(3) Communicating to any prospective purchaser that he or she would not be comfortable or compatible with existing residents of a community, neighborhood, or development because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Assigning any person to a particular section of a community, neighborhood, or development, or to a particular floor of a building, because of race, color, religion, sex, handicap, familial status, or national origin.

(d) Prohibited activities relating to dwellings under section 2 of this rule include, but are not limited to, the following:

(1) Discharging or taking other adverse action against an employee, broker, or agent because he or she refused to participate in a discriminatory housing practice.

(2) Employing codes or other devices to segregate or reject applicants, purchasers, or renters:

(A) refusing to take or to show listings of dwellings in certain areas because of race, color, religion, sex, handicap, familial status, or national origin; or

(B) refusing to deal with certain brokers or agents because they or one (1) or more of their clients are of a particular race, color, religion, sex, handicap, familial status, or national origin.

(3) Denying or delaying processing an application made by a purchaser or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Refusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently because of race, color, religion, sex, handicap, familial status, or national origin.

(Civil Rights Commission; 910 IAC 2-2-4; filed Aug 20, 1993, 5:00 p.m.: 17 IR 13; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

910 IAC 2-2-5 Discriminatory advertisements, statements, and notices

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 5. (a) It shall be unlawful to make, print, or publish or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling which indicates any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

(b) The prohibition in this section shall apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards, or documents used with respect to the sale or rental of a dwelling.

(c) Discriminatory notices, statements, and advertisements include, but are not limited to, the following:

(1) Using words, phrases, photographs, illustrations, symbols, or forms which convey that dwellings are available or not available to a particular group of persons because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Expressing to agents, brokers, employees, prospective sellers, renters, or any other person a preference for or limitation on any purchaser or renter because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Selecting media or locations for advertising the sale or rental of a dwelling which denies particular segments of the housing market information about housing opportunities because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Refusing to publish advertising for the sale or rental of a dwelling or requiring a different charge or term for such advertising because of race, color, religion, sex, handicap, familial status, or national origin.

(d) 910 IAC 2-7 provides information to assist a person in advertising a dwelling in a nondiscriminatory manner and describes matters the ICRC will review in evaluating compliance with IC 22-9.5 and in investigating complaints alleging discriminatory housing practices involving advertising. (*Civil Rights Commission; 910 IAC 2-2-5; filed Aug 20, 1993, 5:00 p.m.: 17 IR 14; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 2-2-6 Discriminatory representations on the availability of dwellings

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 6. (a) It shall be unlawful to provide inaccurate or untrue information about the availability of a dwelling for sale or rental because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Prohibited actions under this section include, but are not limited to, the following:

(1) Indicating through words or conduct that a dwelling which is available for inspection, sale, or rental has been sold or rented because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Representing that covenants or other deed, trust, or lease provisions which purport to restrict the sale or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin preclude the sale or rental of such dwelling to a person.

(3) Enforcing covenants or other deed, trust, or lease provisions which preclude the sale or rental of a dwelling to any person because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Limiting information, by word or conduct, regarding suitably priced dwellings available for inspection, sale, or rental because of race, color, religion, sex, handicap, familial status, or national origin.

(5) Providing false or inaccurate information regarding the availability of a dwelling for sale or rental to any person, including testers, regardless of whether such person is actually seeking housing because of race, color, religion, sex, handicap, familial status, or national origin.

(*Civil Rights Commission; 910 IAC 2-2-6; filed Aug 20, 1993, 5:00 p.m.: 17 IR 14; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 2-2-7 Blockbusting

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 7. (a) It shall be unlawful, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin or with a handicap.

(b) In establishing a discriminatory housing practice under this section, it is not necessary that there was in fact profit as long as profit was a factor for engaging in the blockbusting activity.

(c) Prohibited actions under this section include, but are not limited to, the following:

(1) Engaging, for profit, in conduct (including an uninvited solicitation for a listing) which conveys to a person that a neighborhood is undergoing or is about to undergo a change in the race, color, religion, sex, handicap, familial status, or national origin of a person residing in it, in order to encourage a person to offer a dwelling for sale or rental.

(2) Encouraging, for profit, any person to sell or rent a dwelling through an assertion that the entry or prospective entry of a person of a particular race, color, religion, sex, handicap, familial status, or national origin can or will result in undesirable consequences for the project, neighborhood, or community such as any of the following:

(A) Lowering property values.

(B) An increase in criminal or antisocial behavior.

(C) A decline in the quality of schools or other services or facilities.

(Civil Rights Commission; 910 IAC 2-2-7; filed Aug 20, 1993, 5:00 p.m.: 17 IR 14; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

910 IAC 2-2-8 Discrimination in the provision of brokerage services

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 8. (a) It shall be unlawful:

(1) to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings; or

(2) to discriminate against any person in the terms or conditions of such access, membership, or participation;

because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Prohibited actions under this section include, but are not limited to, the following:

(1) Setting different fees for access to or membership in a multiple-listing service because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Denying or limiting benefits accruing to members in a real estate brokers' organization because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Imposing different standards or criteria for membership in a real estate sales or rental organization because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Establishing geographic boundaries or office location or residence requirements for access to or membership or participation in any multiple-listing service, real estate brokers' organization, or other service, brokers' organization, or facility relating to the business of selling or renting a dwelling because of race, color, religion, sex, handicap, familial status, or national origin.

(Civil Rights Commission; 910 IAC 2-2-8; filed Aug 20, 1993, 5:00 p.m.: 17 IR 15; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

910 IAC 2-2-9 Discrimination in residential real estate related transactions

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5-5-6

Sec. 9. (a) This section provides ICRC's interpretation of the conduct that is unlawful housing discrimination under IC 22-9.5-5-6.

(b) It shall be unlawful for any person or other entity whose business includes engaging in a residential real estate related transaction to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction because of race, color, religion, sex, handicap, familial status, or national origin. *(Civil Rights Commission; 910 IAC 2-2-9; filed Aug 20, 1993, 5:00 p.m.: 17 IR 15; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)*

910 IAC 2-2-10 “Real estate related transaction” defined

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 10. As used in this rule, “residential real estate related transaction” means the following:

(1) Making or purchasing a loan or providing other financial assistance for:

(A) purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(B) securing residential real estate.

(2) Selling, brokering, or appraising residential real property.

(Civil Rights Commission; 910 IAC 2-2-10; filed Aug 20, 1993, 5:00 p.m.: 17 IR 15; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

910 IAC 2-2-11 Discrimination in making a loan and providing other financial assistance

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 11. (a) It shall be unlawful for any person or entity whose business includes engaging in a residential real estate related transaction to discriminate against any person in making available a loan or other financial assistance for a dwelling, or a loan or other financial assistance which is to be secured by dwelling, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Prohibited practices under this section include, but are not limited to, the following:

(1) Failing or refusing to provide to any person in connection with a residential real estate related transaction information regarding the availability of loans or other financial assistance, application requirements, procedures, or standards for the review and approval of loans or financial assistance.

(2) Providing information which is inaccurate or different from that provided others because of race, color, religion, sex, handicap, familial status, or national origin.

(Civil Rights Commission; 910 IAC 2-2-11; filed Aug 20, 1993, 5:00 p.m.: 17 IR 15; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

910 IAC 2-2-12 Discrimination in purchasing loans

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 12. (a) It shall be unlawful for any person or entity engaged in purchasing loans or other debts or securities which support the purchase, construction, improvement, repair, or maintenance of a dwelling or which are secured by residential real estate:

(1) to refuse to purchase such loans, debts, or securities; or

(2) to impose different terms or conditions for such purchases;

because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Unlawful conduct under this section includes, but is not limited to, the following:

(1) Purchasing loans or other debts or securities which relate to or are secured by dwellings in certain communities or neighborhoods but not in others because of race, color, religion, sex, handicap, familial status, or national origin of persons in such neighborhoods or communities.

(2) Pooling or packaging loans or other debts or securities which relate to or are secured by dwellings differently because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Imposing or using different terms or conditions on marketing or selling securities issued on the basis of loans or other debts or securities which relate to or are secured by dwellings because of race, color, religion, sex, handicap, familial status, or national origin.

(c) This section does not prevent consideration in purchasing a loan of factors justified by business necessity, including requirements of federal law, relating to a transaction's financial security or to protection against default or reduction of the value of the security. Thus, this section does not preclude consideration employed in a normal and prudent transaction, provided that no such factor may in any way relate to race, color, religion, sex, handicap, familial status, or national origin. *(Civil Rights Commission;*

910 IAC 2-2-12; filed Aug 20, 1993, 5:00 p.m.: 17 IR 16; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

910 IAC 2-2-13 Discrimination in terms and conditions for making available loans or other financial assistance

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 13. (a) It shall be unlawful for any person or entity engaged in making a loan or other financial assistance relating to the purchase, construction, improvement, repair, or maintenance of a dwelling or which is secured by residential real estate to impose different terms or conditions for the availability of such a loan or other financial assistance because of race, color, religion, sex, handicap, familial status, or national origin.

(b) Unlawful conduct under this section includes, but is not limited to, the following:

(1) Using different policies, practices, or procedures in evaluating or determining creditworthiness of any person in connection with the provision of any loan or other financial assistance for a dwelling or for any loan or other financial assistance which is secured by residential real estate because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Determining the type of loan or other financial assistance to be provided with respect to a dwelling or fixing the amount, interest rate, duration, or other terms for a loan or other financial assistance for a dwelling or which is secured by residential real estate because of race, color, religion, sex, handicap, familial status, or national origin.

(Civil Rights Commission; 910 IAC 2-2-13; filed Aug 20, 1993, 5:00 p.m.: 17 IR 16; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

910 IAC 2-2-14 Unlawful practices in selling, brokering, or appraising residential real property

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 14. (a) It shall be unlawful for any person or other entity whose business includes engaging in selling, brokering, or appraising residential real property to discriminate against any person in making available such services, or in the performance of such services, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) As used in this rule, "appraisal" means an estimate or opinion of the value of specified residential real property made in a business context in connection with the sale, rental, financing, or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate related transaction, whether the appraisal is oral, written, or transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.

(c) Nothing in this rule prohibits a person engaged in the business of making or furnishing appraisals of residential real property from taking into consideration factors other than race, color, religion, sex, handicap, familial status, or national origin.

(d) Practices which are unlawful under this rule include, but are not limited to, using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, handicap, familial status, or national origin. (Civil Rights Commission; 910 IAC 2-2-14; filed Aug 20, 1993, 5:00 p.m.: 17 IR 16; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

Rule 3. Handicaps; Prohibition Against Discrimination

910 IAC 2-3-1 Purpose

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5-5-5

Sec. 1. The purpose of this rule is to effectuate IC 22-9.5-5-5. (Civil Rights Commission; 910 IAC 2-3-1; filed Aug 20, 1993, 5:00 p.m.: 17 IR 17; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

910 IAC 2-3-2 Definitions

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 2. The following definitions apply throughout this rule:

- (1) "Accessible", when used with respect to the public and common use areas of a building containing covered multiple-family dwellings, means that the public or common use area of the building can be approached, entered, and used by individuals with physical handicaps. "Readily accessible to and usable by" is synonymous with accessible. A public or common use area that complies with the appropriate requirements of ANSI A117.1 or a comparable standard is accessible within the meaning of this subdivision.
- (2) "Accessible route" means a continuous, unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators, and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps, and lifts. A route that complies with the appropriate requirements of ANSI A117.1 or a comparable standard is an accessible route.
- (3) "ANSI A117.1" means the 1992 edition of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (ANSI A117.1-1992). Copies may be obtained from American National Standards Institute, Inc., 11 West 42nd Street, New York, New York 10036. Copies may be inspected at the Indiana Civil Rights Commission, Indiana Government Center-North, 100 North Senate Avenue, Room 103, Indianapolis, Indiana 46204.
- (4) "Building" means a structure, facility, or portion thereof that contains or serves one (1) or more dwelling units.
- (5) "Building entrance on an accessible route" means an accessible entrance to a building that is connected by an accessible route to public transportation stops, accessible parking and passenger loading zones, or public streets or sidewalks, if available. A building entrance that complies with ANSI A117.1 or a comparable standard complies with this subdivision.
- (6) "Common use areas" means rooms, spaces, or elements inside or outside a building that are made available for the use of residents of a building or the guests thereof. These areas include the following:
 - (A) Hallways.
 - (B) Lounges.
 - (C) Lobbies.
 - (D) Laundry rooms.
 - (E) Refuse rooms.
 - (F) Mail rooms.
 - (G) Recreational areas.
 - (H) Passageways among and between buildings.
- (7) "Controlled substance" means any drug or other substance or immediate precursor included in the definition in Section 102 of the Controlled Substances Act (21 U.S.C. 802).
- (8) "Covered multiple-family dwellings" means buildings consisting of the following:
 - (A) Four (4) or more dwelling units if such buildings have one (1) or more elevators.
 - (B) Two (2) ground floor dwelling units in other buildings consisting of four (4) or more dwelling units.
- (9) "Dwelling unit" means a single unit of residence for a family or one (1) or more persons. The following are examples of dwelling units:
 - (A) A single-family home.
 - (B) An apartment unit within an apartment building.
 - (C) Any other type of dwelling in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one (1) room or portion of the dwelling.
 - (D) Rooms in which people sleep, for example, dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.
- (10) "Entrance" means any access point to a building or portion of a building used by a resident for the purpose of entering.
- (11) "Exterior" means all areas of the premises outside an individual dwelling unit.
- (12) "First occupancy" means a building that has never before been used for any purpose.
- (13) "Ground floor" means a floor of a building with an entrance on an accessible route. A building may have more than one (1) ground floor.
- (14) "Handicap" means, with respect to a person:
 - (A) a physical or mental impairment which substantially limits one (1) or more major life activities;
 - (B) a record of such an impairment; or

(C) being regarded as having such impairment.

The term does not include current illegal use of or addiction to a controlled substance. For purposes of this subdivision, an individual shall not be considered to have a handicap solely because that individual is a transvestite.

(15) "Has a record of such an impairment" means the person has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one (1) or more major life activities.

(16) "Interior" means the spaces, parts, components, or elements of an individual dwelling unit.

(17) "Is regarded as having an impairment" means the person has:

(A) a physical or mental impairment that does not substantially limit one (1) or more major life activities, but that is treated by another person as constituting such a limitation;

(B) a physical or mental impairment that substantially limits one (1) or more major life activities only as a result of the attitudes of others toward such impairment; or

(C) none of the impairments defined in subdivision (20) but is treated by another person as having such an impairment.

(18) "Major life activities" means functions such as the following:

(A) Caring for one's self.

(B) Performing manual tasks.

(C) Walking.

(D) Seeing.

(E) Hearing.

(F) Speaking.

(G) Breathing.

(H) Learning.

(I) Working.

(19) "Modification" means any change to the public or common use areas of a building or any change to a dwelling unit.

(20) "Physical or mental impairment" includes either of the following:

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one (1) or more of the following body systems:

(i) Neurological.

(ii) Musculoskeletal.

(iii) Special sense organs.

(iv) Respiratory including speech organs.

(v) Cardiovascular.

(vi) Reproductive.

(vii) Digestive.

(viii) Genito-urinary.

(ix) Hemic and lymphatic.

(x) Skin.

(xi) Endocrine.

(B) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term includes, but is not limited to, such diseases and conditions as follows:

(i) Orthopedic.

(ii) Visual.

(iii) Speech and hearing impairments.

(iv) Cerebral palsy.

(v) Autism.

(vi) Epilepsy.

(vii) Muscular dystrophy.

(viii) Multiple sclerosis.

(ix) Cancer.

(x) Heart disease.

(xi) Diabetes.

- (xii) Human immunodeficiency virus infection.
- (xiii) Mental retardation.
- (xiv) Emotional illness.
- (xv) Drug addiction, other than addiction caused by current illegal use of a controlled substance.
- (xvi) Alcoholism.

(21) "Premises" means the interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building.

(22) "Public use areas" means interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

(23) "Site" means a parcel of land bounded by a property line or a designated portion of a public right-of-way.

(Civil Rights Commission; 910 IAC 2-3-2; filed Aug 20, 1993, 5:00 p.m.: 17 IR 17; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

910 IAC 2-3-3 General prohibitions

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 3. (a) It shall be unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of:

- (1) the buyer or renter;
- (2) a person residing in or intending to reside in the dwelling after it is so sold, rented, or made available; or
- (3) any person associated with the buyer or renter.

(b) It shall be unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of:

- (1) the buyer or renter;
- (2) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
- (3) any person associated with the buyer or renter.

(c) It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling (a person intending to reside in the dwelling after it is so sold, rented, or made available or any person associated with such person) has a handicap or to make an inquiry as to the nature or severity of a handicap of such person. However, this subsection does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have handicaps:

- (1) Inquiry into an applicant's ability to meet the requirements of ownership or tenancy.
- (2) Inquiry to determine whether an applicant is qualified for a dwelling available only to a person with handicaps or to a person with a particular type of handicap.
- (3) Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to a person with handicaps or a person with a particular type of handicap.
- (4) Inquiry to determine whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance.
- (5) Inquiry to determine whether an applicant has been convicted of illegal manufacture or distribution of a controlled substance.

(d) Nothing in this section requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or would result in substantial physical damage to the property of others. *(Civil Rights Commission; 910 IAC 2-3-3; filed Aug 20, 1993, 5:00 p.m.: 17 IR 18; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)*

910 IAC 2-3-4 Reasonable modifications of existing premises

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 4. (a) It shall be unlawful for any person to refuse to permit, at the expense of a handicapped person, reasonable modifications of existing premises, occupied or to be occupied by a handicapped person, if the proposed modifications may be necessary to afford the handicapped person full enjoyment of the premises of a dwelling. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises

to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase for handicapped persons any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for restoration at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of restoration. The interest in any such account shall accrue to the benefit of the tenant.

(b) A landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained.

(c) The application of subsection (a) may be illustrated by the following examples:

(1) A tenant with a handicap asks his or her landlord for permission to install grab bars in the bathroom at his or her own expense. It is necessary to reinforce the walls with blocking between studs in order to affix the grab bars. It is unlawful for the landlord to refuse to permit the tenant, at the tenant's own expense, to make the modifications necessary to add the grab bars. However, the landlord may condition permission for the modification on the tenant agreeing to restore the bathroom to the condition that existed before the modification, reasonable wear and tear excepted. It would be reasonable for the landlord to require the tenant to remove the grab bars at the end of the tenancy. The landlord may also reasonably require that the wall to which the grab bars are to be attached be repaired and restored to its original condition, reasonable wear and tear excepted. However, it would be unreasonable for the landlord to require the tenant to remove the blocking, since the reinforced walls will not interfere in any way with the landlord's or the next tenant's use and enjoyment of the premises and may be needed by some future tenant.

(2) An applicant for rental housing has a child who uses a wheelchair. The bathroom door in the dwelling unit is too narrow to permit the wheelchair to pass. The applicant asks the landlord for permission to widen the doorway at the applicant's own expense. It is unlawful for the landlord to refuse to permit the applicant to make the modification. Further, the landlord may not, in usual circumstances, condition permission for the modification on the applicant paying for the doorway to be narrowed at the end of the lease because a wider doorway will not interfere with the landlord's or the next tenant's use and enjoyment of the premises.

(Civil Rights Commission; 910 IAC 2-3-4; filed Aug 20, 1993, 5:00 p.m.: 17 IR 19; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

910 IAC 2-3-5 Reasonable accommodations

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 5. (a) It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

(b) The application of subsection (a) may be illustrated by the following examples:

(1) A blind applicant for rental housing wants to live in a dwelling unit with a dog guide. The building has a no pets policy. It is a violation of this section for the owner or manager of the apartment complex to refuse to permit the applicant to live in the apartment with a dog guide because, without the dog guide, the blind person will not have an equal opportunity to use and enjoy a dwelling.

(2) Progress Gardens is a three hundred (300) unit apartment complex with four hundred fifty (450) parking spaces which are available to tenants and guests of Progress Gardens on a first come first served basis. John applies for housing in Progress Gardens. John is mobility impaired and unable to walk more than a short distance and therefore requests that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. It is a violation of this section for the owner or manager of Progress Gardens to refuse to make this accommodation. Without a reserved space, John might be unable to live in Progress Gardens at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefore is necessary to afford John an equal opportunity to use and enjoy a dwelling. The accommodation is reasonable because it is feasible and practical under the circumstance.

(Civil Rights Commission; 910 IAC 2-3-5; filed Aug 20, 1993, 5:00 p.m.: 17 IR 20; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

910 IAC 2-3-6 Design and construction requirements

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 6. (a) Covered multiple-family dwellings for first occupancy after March 13, 1991, shall be designed and constructed to have at least one (1) building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. For purposes of this section, a covered multiple-family dwelling shall be deemed to be designed and constructed for the first occupancy on or before March 13, 1991, if:

- (1) the dwelling is occupied by March 13, 1991; or
- (2) the last building permit or renewal thereof for the covered multiple-family dwelling is issued by a state, county, or local government on or before July 13, 1990.

The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed or constructed the housing facility.

(b) The application of subsection (a) may be illustrated by the following examples:

(1) A real estate developer plans to construct six (6) covered multiple-family dwelling units on a site with a hilly terrain. Because of the terrain, it will be necessary to climb a long and steep stairway in order to enter any of the dwellings. Since there is no practical way to provide an accessible route to any of the dwellings, one need not be provided.

(2) A real estate developer plans to construct a building consisting of ten (10) units of multiple-family housing on a waterfront site that floods frequently. Because of this unusual characteristic of the site, the builder plans to construct the building on stilts. It is customary for housing in the geographic area where the site is located to be built on stilts. The housing may lawfully be constructed on the proposed site on stilts even though this means that there will be no practical way to provide an accessible route to the building entrance.

(3) A real estate developer plans to construct a multiple-family housing facility on a particular site. The developer would like the facility to be built on the site to contain as many units as possible. Because of the configuration and terrain of the site, it is possible to construct a building with one hundred five (105) units on the site provided the site does not have an accessible route leading to the building entrance. It is also possible to construct a building on the site with an accessible route leading to the building entrance. However, such a building would have no more than one hundred (100) dwelling units. The building to be constructed on the site must have a building entrance on an accessible route because it is not impractical to provide such an entrance because of the terrain or unusual characteristics of the site.

(c) All covered multiple-family dwellings for first occupancy after March 13, 1991, with a building entrance on an accessible route shall be designed and constructed in such a manner that:

- (1) the public and common use areas are readily accessible to and usable by a handicapped person;
- (2) all the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by a handicapped person in a wheelchair; and
- (3) all premises within a covered multiple-family dwelling unit contain the features of adaptable design such as:
 - (A) an accessible route into and through the covered dwelling unit;
 - (B) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - (C) reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall, and shower seat where such facilities are provided; and
 - (D) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(d) The application of subsection (c) may be illustrated by the following examples:

(1) A developer plans to construct a one hundred (100) unit condominium apartment building with one (1) elevator. In accordance with subsection (c), the building has at least one (1) accessible route leading to an accessible entrance. All one hundred (100) units are covered multiple-family dwelling units and they all must be designed and constructed so that they comply with the accessibility requirements of section 3 of this rule.

(2) A developer plans to construct thirty (30) garden apartments in a three (3) story building. The building will not have an elevator. The building will have one (1) accessible entrance which will be on the first floor. Since the building does not have an elevator, only the ground floor units are covered multiple-family units. The ground floor is the first floor because that is the floor that has an accessible entrance. All of the dwelling units on the first floor must meet the accessibility requirements of section 3 of this rule and must have access to at least one (1) of each type of public or common use area available for residents in the building.

(e) Compliance with the appropriate requirements of ANSI A117.1 suffices to satisfy the requirements of section 3 of this rule.

(f) Compliance with a duly enacted law of a state or units of general local government that includes the requirements of subsection (e) and section 3 of this rule satisfies the requirements of section 3 of this rule.

(g) It is the policy of the ICRC to encourage units of general local government to include, in their existing procedures for the review and approval of newly constructed covered multiple-family dwellings, determinations as to whether the design and construction of such dwellings are consistent with the following:

(1) A state or units of general local government may review and approve newly constructed multiple-family dwellings for the purpose of making determinations as to whether the requirements of subsection (e) and section 3 of this rule are met.

(2) Determination of compliance or noncompliance by a state or units of general local government under this section are not conclusive in enforcement proceedings under IC 22-9.5.

(h) This section does not invalidate or limit any law of the state or political subdivision of the state that requires a dwelling to be designed and constructed in a manner that affords a handicapped person greater access than is required by this section. (*Civil Rights Commission; 910 IAC 2-3-6; filed Aug 20, 1993, 5:00 p.m.: 17 IR 20; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

Rule 4. Housing for Older Persons

910 IAC 2-4-1 Purpose

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 1. The purpose of this rule is to effectuate the exemption in IC 22-9.5 that relates to housing for older persons. (*Civil Rights Commission; 910 IAC 2-4-1; filed Aug 20, 1993, 5:00 p.m.: 17 IR 21; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 2-4-2 Exemption

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 2. (a) The provisions regarding familial status in this rule do not apply to housing which satisfies the requirements of sections 3 through 5 of this rule.

(b) Nothing in this rule limits the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. (*Civil Rights Commission; 910 IAC 2-4-2; filed Aug 20, 1993, 5:00 p.m.: 17 IR 21; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 2-4-3 State and federal elderly housing programs

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 3. The provisions regarding familial status in this rule shall not apply to housing provided under any federal or state program that is specifically designed and operated to assist elderly persons as defined in the state and federal program. (*Civil Rights Commission; 910 IAC 2-4-3; filed Aug 20, 1993, 5:00 p.m.: 17 IR 21; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 2-4-4 Housing programs; 62 or over

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 4. (a) The provisions regarding familial status in this rule shall not apply to housing intended for, and solely occupied by, persons sixty-two (62) years of age or older provided that the housing satisfies the requirements of this section even though:

(1) there were persons residing in such housing on September 13, 1988, who were under sixty-two (62) years of age, provided that all new occupants are persons sixty-two (62) years of age or older;

(2) there are unoccupied units, provided that such units are reserved for occupancy by persons sixty-two (62) years of age

or over; or

(3) there are units occupied by employees of the housing facility (and family members residing in the same unit) who are under sixty-two (62) years of age provided they perform substantial duties directly related to the management or maintenance of the housing facility.

(b) The following examples illustrate the application of subsection (a):

(1) John and Mary apply for housing at the Vista Heights apartment complex which is an elderly housing complex operated for persons sixty-two (62) years of age or older. John is sixty-two (62) years of age. Mary is fifty-nine (59) years of age. If Vista Heights wishes to retain its "62 or over" exemption, it must refuse to rent to John and Mary because Mary is under sixty-two (62) years of age. However, if Vista Heights rents to John and Mary, it might qualify for the "55 or over" exemption in section 5 of this rule.

(2) The Blueberry Hill retirement community has one hundred (100) dwelling units. On September 13, 1988, fifteen (15) units were vacant and thirty-five (35) units were occupied with at least one (1) person who is under sixty-two (62) years of age. The remaining fifty (50) units were occupied by persons who were all sixty-two (62) years of age or older. Blueberry Hill can qualify for the "62 or over" exemption as long as all units that were occupied after September 13, 1988, are occupied by persons who are sixty-two (62) years of age or older. The people under sixty-two (62) in the thirty-five (35) units previously described need not be required to leave for Blueberry Hill to qualify for the "62 or over" exemption.

(Civil Rights Commission; 910 IAC 2-4-4; filed Aug 20, 1993, 5:00 p.m.: 17 IR 21; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

910 IAC 2-4-5 Housing programs; 55 or over

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 5. (a) The provisions regarding familial status shall not apply to housing intended and operated for occupancy by at least one (1) person fifty-five (55) years of age or older per unit provided that the housing satisfies subsections (b) or (c) and (d) through (e).

(b) The housing facility shall have significant facilities and services specifically designed to meet the physical or social needs of older persons. Significant facilities and services specifically designed to meet the physical or social needs of older persons include, but are not limited to, the following:

- (1) Social and recreational programs.
- (2) Continuing educational programs.
- (3) Information and counseling.
- (4) Recreational programs.
- (5) Homemaker services.
- (6) Outside maintenance and referral services.
- (7) An accessible physical environment.
- (8) Emergency and preventive health care programs.
- (9) Congregate dining facilities.
- (10) Transportation to facilitate access to social services.
- (11) Services designed to encourage and assist residents to use the services and facilities available.

The housing facility need not have all of the features listed in this subsection to qualify for the exemption under this section.

(c) It is not practicable to provide significant facilities and services designed to meet the physical or social needs of older persons and the housing facility is necessary to provide important housing opportunities for older persons. In order to meet the requirements of this subsection, the owner or manager of the housing facility must demonstrate, through credible and objective evidence, that the significant facilities and services designed to meet the physical or social needs of older persons would result in depriving older persons in the relevant geographic area of needed and desired housing. The following factors, among others, are relevant in meeting the requirements of this subsection:

- (1) Whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical or social needs of older persons either by the owner or by some other entity. Demonstrating that such services and facilities are expensive is not sufficient to show that providing such services is not practicable.
- (2) The amount of rent charged, if the dwellings are rented or the price of the dwellings, if they are offered for sale.

- (3) The income range of the residents of the housing facility.
- (4) The demand for housing for older persons in the relevant geographic area.
- (5) The range of housing choices for older persons within the relevant geographic area.
- (6) The availability of other similarly priced housing for older persons in the relevant geographic area. If similarly priced housing for older persons with significant facilities and services is reasonably available in the relevant geographic area, then the housing facility does not meet the requirements of this subsection.
- (7) The vacancy rate of the housing facility.

(d) At least eighty percent (80%) of the units in the housing facility shall be occupied by at least one (1) person fifty-five (55) years of age or older per unit except that a newly constructed housing facility for first occupancy after June 30, 1991, need not comply with this section until twenty-five percent (25%) of the units in the facility are occupied.

(e) The owner or manager of a housing facility shall publish and adhere to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five (55) years of age or older. The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of this subsection:

- (1) The manner in which the housing facility is described to prospective residents.
- (2) The nature of any advertising designed to attract prospective residents.
- (3) Age verification procedures.
- (4) Lease provisions.
- (5) Written rules and regulations.
- (6) Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.
- (f) The housing facility shall satisfy the requirements of this section even though the following exist:

(1) On September 13, 1988, under eighty percent (80%) of the occupied units in the housing facility were occupied by at least one (1) person fifty-five (55) years of age or older per unit, provided that at least eighty percent (80%) of the units that were occupied by new occupants after September 13, 1988, were occupied by at least one (1) person fifty-five (55) years of age or older.

(2) There are unoccupied units, provided that at least eighty percent (80%) of such units are reserved for occupancy by at least one (1) person fifty-five (55) years of age or over.

(3) There are units occupied by employees of the housing facility (and family members residing in the same unit) who are under fifty-five (55) years of age provided they perform substantial duties directly related to the management or maintenance of the housing facility.

(g) The application of this section may be illustrated by the following examples:

(1) John and Mary apply for housing at the Valley Heights apartment complex which is a one hundred (100) unit housing complex that is operated for persons fifty-five (55) years of age or older in accordance with all the requirements of this section. John is fifty-six (56) years of age. Mary is fifty (50) years of age. Eighty (80) units are occupied by at least one (1) person who is fifty-five (55) years of age or older. Eighteen (18) units are occupied exclusively by persons who are under fifty-five (55) years of age. Among the units occupied by new occupants after September 13, 1988, were eighteen (18) units occupied exclusively by persons under fifty-five (55) years of age. Two (2) units are vacant. At the time John and Mary apply for housing, Valley Heights qualifies for the "55 or over" exemption because eighty-two percent (82%) of the occupied units (eighty (80) to ninety-eight (98)) at Valley Heights are occupied by at least one (1) person fifty-five (55) years of age or older. If John and Mary are accepted for occupancy, then eighty-one (81) out of the ninety-nine (99) occupied units (eighty-two percent (82%)) will be occupied by at least one (1) person fifty-five (55) years of age or older and Valley Heights will continue to qualify for the "55 or over" exemption. If only seventy-eight (78) out of the ninety-eight (98) occupied units had been occupied by at least one (1) person fifty-five (55) years of age or older, Valley Heights would still qualify for the exemption, but could not rent to John or Mary, if they were both under fifty-five (55) years of age, without losing the exemption.

(2) Green Meadow is a one thousand (1,000) unit retirement community that provides significant facilities and services specifically designed to meet the physical or social needs of older persons. On September 13, 1988, Green Meadow published and thereafter adhered to policies and procedures demonstrating an intent to provide housing for persons fifty-five (55) years of age or older. On September 13, 1988, one hundred (100) units were vacant and three hundred (300) units were occupied only by people who were under fifty-five (55) years of age. Consequently, on September 13, 1988, eighty-seven percent (87%) of Green Meadow's occupied units (six hundred (600) out of nine hundred (900)) were occupied by at least one (1)

person fifty-five (55) years of age or older. Under this section, Green Meadow qualifies for the “55 or over” exemption even though on September 13, 1988, under eighty percent (80%) of the occupied units in the housing facility were occupied by at least one (1) person fifty-five (55) years of age or older per unit, provided that at least eighty percent (80%) of the units that were occupied after September 13, 1988, are occupied by at least one (1) person fifty-five (55) years of age or older. Under this section, Green Meadow qualifies for the “55 or over” exemption, even though it has unoccupied units, provided that at least eighty percent (80%) of its unoccupied units are reserved for occupancy by at least one (1) person fifty-five (55) years of age or over.

(3) Waterfront Gardens is a two hundred (200) unit housing facility to be constructed after March 12, 1989. The owner and manager of Waterfront Gardens intends to operate the new facility in accordance with this section. Waterfront Gardens need not comply with subsection (d) which requires that at least eighty percent (80%) of the occupied units be occupied by at least one (1) person fifty-five (55) years of age or older per unit until fifty (50) units (twenty-five percent (25%)) are occupied. When the fiftieth unit is occupied, then eighty percent (80%) of the fifty (50) are occupied units. Forty (40) units must be occupied by at least one (1) person who is fifty-five (55) years of age or older for Waterfront Gardens to qualify for the “55 or over” exemption.

(Civil Rights Commission; 910 IAC 2-4-5; filed Aug 20, 1993, 5:00 p.m.: 17 IR 22; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

Rule 5. Interference; Coercion; Intimidation

910 IAC 2-5-1 Prohibitions

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5-5-8

Sec. 1. (a) This rule provides the ICRC's interpretation of conduct that is unlawful under IC 22-9.5-5-8.

(b) It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this rule.

(c) Conduct made unlawful under this rule includes, but is not limited to, the following:

(1) Coercing a person, orally, in writing, or by other means to deny or limit the benefits provided that person in connection with the sale or rental of a dwelling or in connection with a residential real estate related transaction because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Threatening, intimidating, or interfering with persons in their enjoyment of a dwelling because of the race, color, religion, sex, handicap, familial status, or national origin of such person or of visitors or associates of such persons.

(Civil Rights Commission; 910 IAC 2-5-1; filed Aug 20, 1993, 5:00 p.m.: 17 IR 24; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

Rule 6. Complaint Processing

910 IAC 2-6-1 Purpose; applicability

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5-6

Sec. 1. (a) This rule contains the procedures established by the ICRC for the investigation and conciliation of a complaint under IC 22-9.5-6.

(b) This rule applies to the following:

(1) A complaint alleging discriminatory housing practices because of race, color, religion, sex, or national origin.

(2) A complaint alleging discriminatory housing practices because of handicap or familial status occurring on or after July 1, 1992.

(c) 910 IAC 2-7 governs the administrative proceedings before an administrative law judge adjudicating charges issued under section 6(b) of this rule. *(Civil Rights Commission; 910 IAC 2-6-1; filed Aug 20, 1993, 5:00 p.m.: 17 IR 24; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)*

910 IAC 2-6-2 Complaints

Authority: IC 22-9.5-4-2

Affected: IC 4-21.5-1; IC 22-9.5-5; IC 22-9.5-7

Sec. 2. (a) The ICRC shall receive information concerning an alleged discriminatory housing practice from any person. Where the information constitutes a complaint within the meaning of IC 22-9.5 and this section and is furnished by an aggrieved person, it shall be considered to be filed under IC 22-9.5. Where additional information is required for purposes of perfecting a complaint under subsection (f), the ICRC will advise what additional information is needed and will provide appropriate assistance in filing the complaint. The information may also be made available to any other federal or local agency having an interest in the matter. In making available such information, steps will be taken to protect the confidentiality of any informant or complainant where desired by the informant or complainant and where permitted by state law.

(b) Any aggrieved person or the ICRC may file a complaint no later than one (1) year after an alleged discriminatory housing practice has occurred or terminated. The complaint may be filed with the assistance of an authorized representative of an aggrieved person, including any organization acting on behalf of an aggrieved person.

(c) A complaint may be filed against the following:

(1) Any person alleged to be engaged, to have engaged, or to be about to engage in a discriminatory housing practice.

(2) Any person who directs or controls, or has the right to direct or control, the conduct of another person with respect to any aspect of the sale, rental, advertising, or financing of a dwelling or the provision of brokerage services relating to the sale or rental of a dwelling if that other person, acting within the scope of his or her authority as employee or agent of the directing or controlling person, is engaged, has engaged, or is about to engage in a discriminatory housing practice.

(d) A complaint may be filed as follows:

(1) An aggrieved person may file a complaint in person or by mail to the Indiana Civil Rights Commission, Indiana Government Center-North, 100 North Senate Avenue, Room 103, Indianapolis, Indiana 46204.

(2) An aggrieved person may provide information to be contained in a complaint by telephone to the ICRC. The ICRC will reduce information provided by telephone to writing on the prescribed complaint form and send the completed complaint form to the aggrieved person to be signed and affirmed as provided in subsection (e)(1).

(3) A complaint may be filed in person or by mail with any substantially equivalent local agency. A complaint filed with a substantially equivalent local agency will be considered to be a complaint filed under IC 22-9.5 if referred for processing to the ICRC.

(e) The form and content of a complaint shall be as follows:

(1) Each complaint must be in writing and must be signed and affirmed by the aggrieved person filing the complaint or, if the complaint is filed by the ICRC, by the director. The signature and affirmation may be made at any time during the investigation. The affirmation shall state, "I declare under penalty of perjury that the foregoing is true and correct."

(2) The ICRC may require complaints to be made on a prescribed complaint form. A complaint form will be available in the office of the ICRC or in any substantially equivalent local agency. Notwithstanding any requirement for use of a prescribed complaint form, the ICRC will accept any written statement which substantially sets forth the allegations of a discriminatory housing practice under IC 22-9.5, including any statement filed with a substantially equivalent local agency. Personnel in any substantially equivalent local agency office will provide appropriate assistance in filling out forms and in filing a complaint.

(3) Each complaint shall contain substantially the following information:

(A) The name and address of the aggrieved person.

(B) The name and address of the respondent.

(C) A description and the address of the dwelling which is involved, if appropriate.

(D) A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice.

(f) Requirements for the date of filing a complaint shall be as follows:

(1) Except as provided in subdivision (2), a complaint is filed when it is received by the ICRC, or dual filed with the ICRC through the United States Department of Housing and Urban Development or a substantially equivalent local agency, in a form that reasonably meets subsection (e).

(2) The ICRC may determine that a complaint is filed for purposes of the one (1) year period for filing a complaint, upon the submission of written information (including information provided by telephone and reduced to writing by an employee of the ICRC) identifying the parties and describing generally the alleged discriminatory housing practice.

(3) Where a complaint alleges a discriminatory housing practice that is continuing, as manifested in a number of incidents

of such conduct, the complaint will be timely if filed within one (1) year of the last alleged occurrence of that practice.

(g) A complaint may be reasonably and fairly amended at any time. Such an amendment may include, but is not limited to, an amendment to cure a technical defect or omission, including failure to:

- (1) sign or affirm a complaint;
- (2) clarify or amplify the allegations in a complaint; and
- (3) join additional or substitute respondents.

Except for purposes of notifying a respondent under subsection (a), an amended complaint shall be considered to be made as of the original filing date.

(h) Upon filing a complaint, the ICRC shall notify, by certified mail or personal service, each aggrieved person on whose behalf the complaint was filed. The notice shall contain the following:

- (1) Acknowledgement of the complaint being filed and the date that the complaint was accepted for filing.
- (2) A copy of the complaint.
- (3) Advice to the aggrieved person of the time limits applicable to processing a complaint and of the procedural rights and obligations of the aggrieved person under this rule and 910 IAC 2-7.
- (4) Advice to the aggrieved person of his or her right to commence a civil action under IC 22-9.5-7 in an appropriate state court, not later than one (1) year after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this one (1) year period excludes any time during which a proceeding is pending under this rule or 910 IAC 2-7 with respect to a complaint or charge based on the alleged discriminatory housing practice.
- (5) Advice to the aggrieved person that retaliation against any person because he or she made a complaint or testified, assisted, or participated in an investigation or conciliation under this rule or an administrative proceeding under 910 IAC 2-7 is a discriminatory housing practice that is prohibited under IC 22-9.5-5.

(i) Within ten (10) days of filing a complaint under subsection (f) or filing an amended complaint under subsection (g), the ICRC will serve a notice on each respondent by certified mail or by personal service. A person who is not named as a respondent in a complaint, but who is identified in the course of the investigation under section 4 of this rule as a person who is alleged to be engaged, to have engaged, or to be about to engage in the discriminatory housing practice upon which the complaint is based may be joined as an additional or substitute respondent by service of a notice on the person under this subsection within ten (10) days of the identification. The notice shall include the following:

- (1) Identification of the alleged discriminatory housing practice upon which the complaint is based, including a copy of the complaint.
- (2) The date the complaint was accepted for filing.
- (3) Advice to the respondent of time limits applicable to complaint processing under this subsection and procedural rights and obligations of the respondent under this rule and 910 IAC 2-7, including the opportunity to submit an answer to the complaint within ten (10) days of receipt of notice as governed by IC 4-21.5-1.
- (4) Advice to the respondent of the aggrieved person's right to commence a civil action under IC 22-9.5-7 in an appropriate state court not later than one (1) year after the occurrence or termination of the alleged discriminatory housing practice. The notice shall state that the computation of this one (1) year period excludes any time during which a proceeding is pending under this rule or 910 IAC 2-7 with respect to a complaint or charge based on the alleged discriminatory housing practice.
- (5) If the person is not named in the complaint but is being joined as an additional or substitute respondent, the notice shall explain the basis for the ICRC's belief that the joined person is properly joined as a respondent.
- (6) Advice to the respondent that retaliation against any person because he or she made a complaint, testified, or assisted or participated in an investigation or conciliation under this rule or 910 IAC 2-7 is a discriminatory housing practice that is prohibited under IC 22-9.5.

(j) The following are requirements concerning an answer to a complaint:

(1) The respondent may file an answer no later than ten (10) days after receipt of the notice described in section 7 of this rule. The respondent may assert any defense that might be available to a defendant in a court of law. The answer must be signed and affirmed by the respondent. The affirmation must state, "I declare under penalty of perjury that the foregoing is true and correct."

(2) An answer may be amended at any time.

(Civil Rights Commission; 910 IAC 2-6-2; filed Aug 20, 1993, 5:00 p.m.: 17 IR 24; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

910 IAC 2-6-3 Referral of complaints to federal and local agencies

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5-6-5; IC 22-9.5-7

Sec. 3. (a) Requirements for notification and referral to substantially equivalent local agencies shall be as follows:

(1) Whenever a complaint alleges a discriminatory housing practice that is within the jurisdiction of a substantially equivalent local agency and the substantially equivalent local agency is certified or may accept interim referrals under 24 CFR 115 with regard to the alleged discriminatory housing practice, the ICRC may notify the substantially equivalent local agency of the filing of the complaint and refer the complaint to the substantially equivalent local agency for further processing before ICRC takes any action with respect to the complaint. The ICRC will notify the substantially equivalent local agency of the referral by certified mail.

(2) The ICRC will notify the aggrieved person and the respondent, by certified mail or personal service, of the notification and referral under subdivision (1). The notice will advise the aggrieved person and the respondent of the aggrieved person's right to commence a civil action under IC 22-9.5-7 in an appropriate state court, no later than one (1) year after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this one (1) year period excludes any time during which a proceeding is pending under this rule and 910 IAC 2-7 with respect to complaint or charge based on the alleged discriminatory housing practice.

(b) After a complaint is referred under this rule, the ICRC will take no further action with respect to the complaint, except as provided in subsection (c).

(c) The ICRC may reactivate a complaint referred under subsection (a) for processing by the ICRC if any of the following occur:

(1) The substantially equivalent local agency consents or requests the reactivation.

(2) The ICRC determines that, with respect to the alleged discriminatory housing practice, the substantially equivalent local agency no longer qualifies for certification as a substantially equivalent local agency and may not accept interim referrals.

(3) The substantially equivalent local agency:

(A) failed to commence proceedings with respect to the complaint within thirty (30) days of the date that it received the notification and referral of the complaint; or

(B) commenced proceedings within this thirty (30) day period, but the ICRC determines that the substantially equivalent local agency failed to carry the proceedings forward with reasonable promptness. The ICRC shall not reactivate a complaint under this subdivision until the ICRC has conferred with the substantially equivalent local agency to determine the reason for the delay in processing the complaint. If the ICRC believes that the substantially equivalent local agency will proceed expeditiously following the conference, the ICRC may leave the complaint with the substantially equivalent local agency for a reasonable time, notwithstanding the expiration of the thirty (30) day period or a previous failure to carry the proceedings forward with reasonable promptness.

(d) Requirements for notification upon reactivation shall be as follows:

(1) Whenever a complaint referred to a substantially equivalent local agency under subsection (c) is reactivated, the ICRC will notify the substantially equivalent local agency, the aggrieved person, and the respondent of ICRC's reactivation. The notification shall be made by certified mail or personal service.

(2) Notification to the respondent and the aggrieved person shall do the following:

(A) Advise the aggrieved person and the respondent of the time limits applicable to complaint processing and the procedural rights and obligations of the aggrieved person and the respondent under this rule and 910 IAC 2-7.

(B) State that the ICRC will process the complaint under IC 22-9.5 and that the substantially equivalent local agency to which the complaint was referred will not continue to process the complaint under law.

(C) Advise the aggrieved person and the respondent of the aggrieved person's right to commence a civil action under IC 22-9.5-7 in an appropriate state court, no later than one (1) year after the occurrence or termination of the alleged discriminatory housing practice. The notice shall state that the computation of this one (1) year period excludes any time during which a proceeding is pending under this rule with respect to a complaint or charge based on the alleged discriminatory housing practice under 910 IAC 2-7. The notice shall also state that the time period includes the time during which an action arising from a breach of conciliation agreement under IC 22-9.5-6-5 is pending.

(Civil Rights Commission; 910 IAC 2-6-3; filed Aug 20, 1993, 5:00 p.m.: 17 IR 26; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

910 IAC 2-6-4 Investigation procedures

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 4. (a) Upon filing a complaint under section 2 of this rule, the ICRC will initiate an investigation. The purposes of an investigation are as follows:

- (1) To obtain information concerning the events or transactions that relate to the alleged discriminatory housing practice identified in the complaint.
- (2) To document policies or practices of the respondent involved in the alleged discriminatory housing practice raised in the complaint.
- (3) To develop factual data necessary for the director to make a determination under section 6(a) of this rule whether reasonable cause exists to believe that a discriminatory housing practice has occurred, or is about to occur, and to take other actions provided under this section.

(b) Upon the written direction of the director, the ICRC may initiate an investigation of housing practices to determine whether a complaint should be filed under section 2 of this rule. Such an investigation will be conducted in accordance with the procedures described under this section.

(c) Where the director determines that:

- (1) the alleged discriminatory practices contained in a complaint are pervasive or institutional in nature; or
- (2) processing the complaint will:
 - (A) involve complex issues or novel questions of fact or law; or
 - (B) affect a large number of persons;

the director may identify the complaint for systemic processing. This determination can be based on the face of the complaint or on information gathered in connection with an investigation. Systemic investigations may focus not only on documenting facts involved in the alleged discriminatory housing practice that is the subject of the complaint but also on reviewing other policies and procedures related to matters under investigation to make sure that they also comply with the nondiscrimination requirements of IC 22-9.5.

(d) In conducting an investigation under this section, the ICRC will seek the voluntary cooperation of all persons to obtain access to premises, records, documents, individuals, and other possible sources of information:

- (1) to examine, record, and copy necessary materials; and
- (2) to take and record testimony or statements of persons reasonably necessary for the furtherance of the investigation.

The ICRC may conduct discovery in aid of the investigation by the same methods and to the same extent that parties may conduct discovery in an administrative proceeding under 910 IAC 2-7, except that the ICRC shall have the power to issue subpoenas described in 910 IAC 2-7-6(a) in support of the investigation. An administrative law judge, upon motion sufficiently supported and due to exceptional circumstances, may grant to any party the use of any discovery provision under 910 IAC 2-7 at any time after the filing of a complaint.

(e) The ICRC, in processing complaints, may seek the cooperation and utilize the services of federal or substantially equivalent local agencies, including any substantially equivalent local agency having regulatory or supervisory authority over financial institutions.

(f) The investigation shall remain open until the reasonable cause determination is made under section 6(a) of this rule or a conciliation agreement is executed and approved under section 5(b) of this rule. Unless it is impracticable to do so, the ICRC shall complete the investigation of the alleged discriminatory housing practice within one hundred (100) days of filing the complaint (or where the ICRC reactivates the complaint, within one hundred (100) days after service of the notice of reactivation under section 3(d) of this rule). If the ICRC is unable to complete the investigation within the one hundred (100) day period, the ICRC shall notify the aggrieved person and the respondent, by certified mail or personal service, of the reasons for the delay.

(g) At the end of each investigation under this section, the ICRC shall prepare a final investigative report. The investigative report shall contain the following:

- (1) The names and dates of contacts with witnesses.
- (2) A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent.
- (3) A summary description of other pertinent records.
- (4) A summary of witness statements.
- (5) Answers to interrogatories.

A final investigative report may be amended at any time if additional evidence is discovered.

(h) Notwithstanding the prohibitions and requirements with respect to disclosure of information contained in section 5(j) of this rule, the ICRC will make information derived from an investigation, including the final investigative report, available to the aggrieved person and the respondent. Following the completion of investigation, the ICRC shall notify the aggrieved person and the respondent that the final investigation report is complete and will be provided upon request. *(Civil Rights Commission; 910 IAC 2-6-4; filed Aug 20, 1993, 5:00 p.m.: 17 IR 27; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)*

910 IAC 2-6-5 Conciliation

Authority: IC 22-9.5-4-2

Affected: IC 4-21.5-6; IC 22-9.5

Sec. 5. (a) During the period beginning with filing the complaint and ending with filing a charge or dismissal of the complaint, the ICRC will, to the extent feasible, attempt to conciliate the complaint.

(b) In conciliating a complaint, ICRC will attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy any violations of the rights of the aggrieved person and take such action as will assure the elimination of discriminatory housing practices, or the prevention of their occurrence, in the future.

(c) Generally, officers, employees, and agents of the ICRC engaged in the investigation of a complaint under this rule will not participate or advise in the conciliation of the same complaint or in any factually related complaint. Where the rights of the aggrieved party and the respondent can be protected and the prohibitions with respect to the disclosure of information can be observed, the investigator may suspend fact-finding and engage in efforts to resolve the complaint by conciliation.

(d) The terms of a settlement of a complaint will be reduced to a written conciliation agreement. The conciliation agreement shall seek to protect the interests of the aggrieved person, other persons similarly situated, and the public interest. The types of relief that may be sought for the aggrieved person are described in subsection (f). The provisions that may be sought for the vindication of the public interest are described in subsection (g).

(e) The agreement must be executed by the respondent and complainant. The agreement is subject to approval by the ICRC who will indicate approval by signing the agreement. The ICRC will approve an agreement and, if the ICRC is the complainant, will execute the agreement only if:

- (1) the complainant and the respondent agree to the relief accorded the aggrieved person;
- (2) the provisions of the agreement will adequately vindicate the public interest; and
- (3) all aggrieved persons named in the complaint are satisfied with the relief provided to protect their interests if the ICRC is the complainant.

The director may issue a charge under section 6(g) of this rule if the aggrieved person and the respondent have executed a conciliation agreement that has not been approved by the ICRC.

(f) Any of the following types of relief may be sought for aggrieved persons in conciliation:

- (1) Monetary relief in the form of damages, including damages caused by humiliation or embarrassment and attorney fees.
- (2) Other equitable relief, including, but not limited to, the following:

- (A) Access to the dwelling.
- (B) The provision of services or facilities in connection with a dwelling.
- (C) Other specific relief.

- (3) Injunctive relief appropriate to the elimination of discriminatory housing practices affecting the aggrieved person or other person.

The conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Arbitration may award appropriate relief as described in this subsection. The aggrieved person and the respondent may, in the conciliation agreement, limit the types of relief that may be awarded under binding arbitration.

(g) The following are types of provisions that may be sought for vindication of public interest:

- (1) Elimination of discriminatory housing practices.
 - (2) Prevention of future discriminatory housing practices.
 - (3) Remedial affirmative activities to overcome discriminatory housing practices.
 - (4) Reporting requirements.
 - (5) Monitoring and enforcement activities.
- (h) The ICRC may terminate efforts to conciliate the complaint if:

- (1) the respondent fails or refuses to confer with ICRC;
- (2) the aggrieved person or the respondent fails to make a good faith effort to resolve any dispute; or
- (3) the ICRC finds, for any reason, that voluntary agreement is not likely to result.

(i) Where the aggrieved person has commenced a civil action seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced, ICRC will terminate conciliation unless the court specifically requests assistance from the ICRC.

(j) Except as provided in subsection (k), nothing that is said or done in the course of conciliation under this rule may be made public or used as evidence in a subsequent administrative hearing under 910 IAC 2-7 or in a civil action under IC 22-9.5 without the written consent of the persons concerned.

(k) The conciliation agreement shall be made public unless the aggrieved person and respondent request nondisclosure and the ICRC determines that disclosure is not required to further the purposes of IC 22-9.5. Notwithstanding a determination that disclosure of a conciliation agreement is not required, the ICRC may publish tabulated descriptions of the results of all conciliation efforts.

(l) The ICRC may, from time to time, review compliance with the terms of any conciliation agreement. Whenever the ICRC has reasonable cause to believe that a respondent has breached a conciliation agreement, the ICRC may file a civil action under IC 4-21.5-6 for the enforcement of the terms of the conciliation agreement. (*Civil Rights Commission; 910 IAC 2-6-5; filed Aug 20, 1993, 5:00 p.m.: 17 IR 28; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 2-6-6 Issuance of charge

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5-6-12

Sec. 6. (a) If a conciliation agreement under section 5(d) and 5(e) of this rule has not been executed by the complainant and the respondent, and approved by the ICRC, the director, within the time limits set forth in section 4(f) of this rule, shall determine whether, based on the totality of the factual circumstances known at the time of the decision, reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The reasonable cause determination shall be based solely on the facts concerning the alleged discriminatory housing practice provided by the complainant and respondent and otherwise disclosed during the investigation. In making the reasonable cause determination, the director shall consider whether the facts concerning the alleged discriminatory housing practices are sufficient to warrant the initiation of a civil action in state court.

(b) If the director determines that reasonable cause exists, the director shall immediately issue a charge under subsection (g) on behalf of the aggrieved person and shall notify the aggrieved person and the respondent of this determination by certified mail or personal service.

(c) If the director determines that no reasonable cause exists, the director shall do the following:

- (1) Issue a short and plain written statement of the facts upon which the director has based the no reasonable cause determination.
- (2) Dismiss the complaint.
- (3) Notify the aggrieved person and the respondent of the dismissal (including the written statement of facts) by certified mail or personal service.

The fact of the dismissal, including the names of the parties, shall be public information available upon request.

(d) The director may not issue a charge under subsection (b)(1) regarding an alleged discriminatory housing practice if an aggrieved person has commenced a civil action under an act of Congress or a state law seeking relief with respect to the alleged discriminatory housing practice and the trial in the action has commenced. If a charge may not be issued because of the commencement of such a trial, the director will so notify the aggrieved person and the respondent by certified mail or personal service.

(e) The director shall make the reasonable cause determination after the ICRC forwards the matter for consideration. The director shall make a reasonable cause determination within one hundred (100) days after filing the complaint (or where the director has reactivated the complaint, within one hundred (100) days after service of the notice of reactivation under section 3(d) of this rule unless it is impracticable to do so).

(f) If the director is unable to make the determination within the one hundred (100) day period specified in subsection (e), the ICRC shall notify the aggrieved person and the respondent, by certified mail or personal service, of the reasons for the delay.

(g) Requirements for the issuance of charge shall be as follows:

- (1) The following requirements apply to a charge:
 - (A) A charge shall consist of a short and plain written statement of the facts upon which the director has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.
 - (B) A charge shall be based on the final investigative report.
 - (C) A charge need not be limited to facts or grounds that are alleged in the complaint filed under section 2 of this rule. If a charge is based on grounds that are alleged in the complaint, the ICRC will not issue a charge with regard to the grounds unless the record of the investigation demonstrates that the respondent has been given notice and an opportunity to respond to the allegation.
- (2) Within three (3) business days after the issuance of the charge, the director shall do the following:
 - (A) Obtain a time and place for a hearing.
 - (B) File the charge along with the notifications described in 910 IAC 2-7-4(d) and 910 IAC 2-7-4(e).
 - (C) Serve the charge and notifications in accordance with 910 IAC 2-7-1(e).
 - (D) Notify the ICRC of the filing of the charge.
- (h) The following apply to election of a civil action or provision of an administrative proceeding:
 - (1) If a charge is issued under subsection (g), a complainant (including the ICRC, if the ICRC filed the complaint), a respondent, or an aggrieved person on whose behalf the complaint is filed may elect, in lieu of an administrative proceeding under 910 IAC 2-7, to have the claims asserted in the charge decided in a civil action under IC 22-9.5-6-12.
 - (2) The election must be made not later than twenty (20) days after the receipt of service of the charge or, in the case of the ICRC, not later than twenty (20) days after service. The notice of the election must be filed with the docket clerk of the ICRC and serviced on the director, the respondent, and the aggrieved persons on whose behalf the complaint was filed. The notification shall be filed and served in accordance with 910 IAC 2-7.
 - (3) If an election is not made under this section, the director will maintain an administrative proceeding based on the charge in accordance with 910 IAC 2-7.

(Civil Rights Commission; 910 IAC 2-6-6; filed Aug 20, 1993, 5:00 p.m.: 17 IR 29; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

910 IAC 2-6-7 Judicial action

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5-4-7; IC 22-9.5-8.1-1

Sec. 7. (a) If, at any time following the filing of a complaint, the director concludes that prompt judicial action is necessary to carry out the purposes of this rule or 910 IAC 2-7, the director may commence a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint. The commencement of a civil action under this section shall not affect the initiation or continuation of proceedings under this rule or administrative proceedings under 910 IAC 2-7.

(b) If the director has reason to believe that a basis exists for the commencement of proceedings against the respondent:

- (1) under IC 22-9.5-8.1-1, concerning pattern or practice cases;
- (2) under IC 22-9.5-4-7(b), concerning enforcement of subpoenas; or
- (3) proceedings by any governmental licensing or supervisory authorities;

the director shall transmit the information upon which that belief is based to the appropriate authorities for enforcement. *(Civil Rights Commission; 910 IAC 2-6-7; filed Aug 20, 1993, 5:00 p.m.: 17 IR 30; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)*

910 IAC 2-6-8 Other action

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5-6-17; IC 22-9.5-10

Sec. 8. In addition to the actions described in section 7(a) of this rule, the ICRC may pursue one (1) or more of the following courses of action:

- (1) Refer the matter to the appropriate prosecuting attorney for appropriate action, for example, enforcement of criminal penalties under IC 22-9.5-10.
- (2) Refer the matter to the appropriate licensing or regulatory agency under IC 22-9.5-6-17.
- (3) Inform any other federal, state, or substantially equivalent local agency with an interest in the enforcement of the

respondent's obligations with respect to nondiscrimination in housing.
(*Civil Rights Commission; 910 IAC 2-6-8; filed Aug 20, 1993, 5:00 p.m.: 17 IR 30; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

Rule 7. Administrative Proceedings

910 IAC 2-7-1 General information

Authority: IC 22-9.5-4-2

Affected: IC 4-21.5-3-2; IC 22-9.5-6-12

Sec. 1. (a) This rule contains the rules of practice and procedure established by the ICRC for administrative proceedings before an administrative law judge adjudicating the claims asserted in a complaint issued under 910 IAC 2-6, in accordance with IC 4-21.5, where no party, the complainant, the respondent, or an aggrieved party elects to have the claims decided in a civil action under IC 22-9.5-6-12(a).

(b) Hearings under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

(c) The ICRC shall reasonably accommodate persons with disabilities who are participants in the hearing process or interested members of the general public.

(d) IC 4-21.5-3-2 applies to time computations. Except for time periods required by statute, the administrative law judge may enlarge or reduce any time period required under this rule where necessary to avoid prejudicing the public interest or the rights of the parties.

(e) Copies of all filed documents shall be served on all parties of record. All filed documents shall clearly designate the docket number, if any, and title of the proceeding. All documents to be filed shall be delivered or mailed to the Docket Clerk, ICRC, Indiana Government Center-North, 100 North Senate Avenue, Room 103, Indianapolis, Indiana 46204. An original and three (3) copies shall be filed with the docket clerk of the ICRC.

(f) Service of documents upon any party may be made by personal service or by mailing a copy to the last known address. When a party is represented by an attorney, service shall be made upon the attorney. The person serving the document shall certify to the manner and date of service.

(g) The docket clerk shall serve all notices, orders, decisions, and other documents by mail to the last known address. (*Civil Rights Commission; 910 IAC 2-7-1; filed Aug 20, 1993, 5:00 p.m.: 17 IR 30; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 2-7-2 Administrative law judge

Authority: IC 22-9.5-4-2

Affected: IC 4-21.5-1; IC 22-9.5

Sec. 2. (a) Proceedings under this rule shall be presided over by an administrative law judge appointed under 910 IAC 1-3-5.

(b) The administrative law judge shall have all powers necessary to conduct a fair and impartial hearing, including, but not limited to, the following:

(1) To conduct hearings in accordance with this rule.

(2) To administer oaths and affirmations and examine witnesses.

(3) To rule on offers of proof and receive evidence.

(4) To take depositions or have depositions taken when the ends of justice would be served.

(5) To regulate the course of the hearing and the conduct of parties and their counsel.

(6) To hold conference for the settlement or simplification of the issues by consent of the parties.

(7) To dispose of motions, procedural requests, and similar matters.

(8) To make initial decisions as described under section 9 of this rule.

(9) To exercise such powers as are necessary and appropriate for the purpose of the hearing and conduct of the proceeding.

(*Civil Rights Commission; 910 IAC 2-7-2; filed Aug 20, 1993, 5:00 p.m.: 17 IR 31; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 2-7-3 Parties

Authority: IC 22-9.5-4-2

Affected: IC 4-21.5-3-15; IC 22-9.5

Sec. 3. (a) Parties to the proceeding include the following:

(1) The director. The director files the charge under 910 IAC 2-6-6(g) seeking appropriate relief for an aggrieved party and vindication of the public interest.

(2) Respondent. A respondent is a person named in the charge issued under 910 IAC 2-6-6(g) against whom relief is sought.

(3) Intervenor. Any aggrieved person may file a request for intervention under section 4(g) of this rule. Intervention shall be permitted if the request is timely and:

(A) the intervenor is the aggrieved person on whose behalf the charge is issued; or

(B) the intervenor is an aggrieved person who claims an interest in the property or transaction that is the subject of the charge and the disposition of the charge may as a practical matter impair or impede the aggrieved person's ability to protect that interest, unless the aggrieved person is adequately represented by the existing parties.

(b) Each party may do the following:

(1) Appear in person.

(2) Be represented by counsel.

(3) Examine or cross-examine witnesses.

(4) Introduce documentary or other relevant evidence into the record.

(5) Request the issuance of subpoenas.

(c) Briefs of amicus curiae may be permitted at the discretion of the administrative law judge. Such participants are not parties to the proceeding.

(d) Parties may be represented in accordance with IC 4-21.5-3-15.

(e) Each attorney or other representative of a party shall file a notice of appearance. The notice must indicate the party on whose behalf the appearance is made. Any individual acting in a representative capacity may be required by the administrative law judge to demonstrate authority to act in that capacity.

(f) An attorney or other representative of a party must file a written notice of intent before withdrawing from participation in the proceeding. (*Civil Rights Commission; 910 IAC 2-7-3; filed Aug 20, 1993, 5:00 p.m.: 17 IR 31; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 2-7-4 Pleadings and motions

Authority: IC 22-9.5-4-2

Affected: IC 4-21.5-3-21; IC 22-9.5-6-12

Sec. 4. (a) Every pleading, motion, brief, of [*sic.*, or] other document shall contain the following:

(1) A caption setting forth the title of the proceeding.

(2) The docket number assigned.

(3) The designation of the type of document, for example, charge or answer to motion of dismissal.

(b) Every pleading, motion, brief, or other document filed by a party shall be signed by the party, the party's representative, or the attorney representing the party and must include the signer's address and telephone number. The signature constitutes a certification that:

(1) the signer has read the document;

(2) to the best of the signer's knowledge, information, and belief, there is good ground to support the document; and

(3) it is not interposed for delay.

(c) The administrative law judge may refuse to consider any motion or other pleading that is not filed in a timely fashion and in compliance with this section.

(d) Within three (3) days after the issuance of a charge under 910 IAC 2-6-6(g), the director shall serve copies (with the additional information required under subsection (e)) on the respondent and the aggrieved person on whose behalf the complaint was filed.

(e) The charge shall consist of a short and plain written statement of the facts upon which the director has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur. The following notifications shall be served

with the charge:

(1) The notice shall state that a complainant (including the ICRC, if the ICRC filed the complaint), a respondent, or an aggrieved person on whose behalf the complaint was filed may elect to have the claims asserted in the charge decided in a civil action under IC 22-9.5-6-12(a), in lieu of an administrative proceeding under this rule. The notice shall state that the election must be made no later than twenty (20) days after the receipt of the service of the charge. Where ICRC is the complainant, the director must make the election no later than twenty (20) days after the service of the charge. The notice shall state that the notification of the election must be served on the docket clerk in the ICRC, the respondent, and the aggrieved party on whose behalf the complaint was filed.

(2) The notice shall state that if no person timely elects under subdivision (1) to have the claims asserted in the charge decided in a civil action under IC 22-9.5-6-12(a), an administrative proceeding shall be conducted. The notice shall state that if an administrative hearing is conducted:

(A) the parties shall have an opportunity for a hearing at a date and place specified in the notice;

(B) the respondent will have an opportunity to file an answer to the charge within thirty (30) days of the date of service of the charge;

(C) the aggrieved person may participate as a party to the administrative proceeding by filing a timely request for intervention; and

(D) all discovery must be concluded fifteen (15) days before the date set for hearing.

(3) The notice shall state that if at any time following the service of the charge on the respondent, the respondent intends to enter into a contract, sale, encumbrance, or lease with any person regarding the property that is the subject of the charge, the respondent must provide a copy of the charge to the person before the respondent and the person enter into the contract, sale, encumbrance, or lease.

(f) Within the thirty (30) days after the service of the charge, a respondent contesting material facts alleged in a charge or contending that the respondent is entitled to judgment as a matter of law shall file an answer to the charge. An answer shall include the following:

(1) A statement that the respondent admits, denies, or does not have and is unable to obtain sufficient information to admit or deny each allegation made in the charge. A statement of lack of information shall have the effect of a denial. Any allegation that is not denied shall be deemed to be admitted.

(2) A statement of each affirmative defense and a statement of facts supporting each affirmative defense.

(g) Upon timely application, any aggrieved person may petition for intervention to participate as a party to the proceeding as provided for in IC 4-21.5-3-21.

(h) Requirements for amendments shall be as follows:

(1) The director may amend its charge once, as a matter of right prior to filing of the answer.

(2) Upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, the administrative law judge may allow amendments to pleadings upon motion of the party.

(3) When issues not raised by the pleadings are reasonably within the scope of the original charge and have been tried by the express or implied consent of the parties, the issues shall be treated in all respects as if they had been raised in the pleadings and amendments may be made as necessary to make the pleading conform to evidence.

(i) The administrative law judge may, upon reasonable notice, permit supplemental pleadings concerning transactions, occurrences, or events that have happened or been discovered since the date of the pleadings and which are relevant to any of the issues involved.

(j) Requirements for motions shall be as follows:

(1) Any application for an order or other request shall be made by a motion which, unless made during an appearance before the administrative law judge, shall be made in writing. A motion or request made during an appearance before the administrative law judge shall be stated orally and made a part of the transcript. All parties shall be given a reasonable opportunity to respond to written or oral motions or requests.

(2) Within five (5) days after a written motion is served, any party to the proceeding may file an answer in support of, or in opposition to, the motion. Unless otherwise ordered by the administrative law judge, no further responsive documents may be filed.

(3) The administrative law judge may order oral argument on any motion.

(Civil Rights Commission; 910 IAC 2-7-4; filed Aug 20, 1993, 5:00 p.m.: 17 IR 32; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

910 IAC 2-7-5 Discovery

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 5. Pursuant to Rule 28(F) of the Indiana Rules of Procedure as adopted by the Indiana supreme court, whenever a public hearing is held before an administrative law judge pursuant to this rule, parties shall be entitled to all discovery provisions of Rules 26 through 37 of the Indiana Rules of Procedure. *(Civil Rights Commission; 910 IAC 2-7-5; filed Aug 20, 1993, 5:00 p.m.: 17 IR 33; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)*

910 IAC 2-7-6 Subpoenas

Authority: IC 22-9.5-4-2

Affected: IC 4-21.5-6; IC 22-9.5

Sec. 6. (a) This section governs the issuance of subpoenas in administrative proceedings under this rule. Except for time periods stated in this article, to the extent that this section conflicts with procedures for the issuance of subpoenas in civil action in the Indiana state courts where the discriminatory housing practice took place, the Indiana Rules of Trial Procedure apply.

(b) Upon the written request of a party, the ICRC may issue a subpoena requiring the following:

(1) The attendance of a witness for the purpose of giving testimony at a deposition.

(2) The attendance of a witness for the purpose of giving testimony at a hearing.

(3) The production of relevant books, papers, documents, or tangible items.

(c) A request for a subpoena in aid of discovery must be submitted in time to permit the conclusion of discovery fifteen (15) days before the date scheduled for the hearing. If a request for a subpoena of a witness for testimony at a hearing is submitted three (3) days or less before the hearing, the subpoena shall be issued at the discretion of the administrative law judge.

(d) A subpoena may be served by any person who is not a party and is not less than eighteen (18) years of age. Service on a person shall be made by delivering a copy of the subpoena to the person and by tendering witness fees and mileage to that person, if required.

(e) A witness summoned by a subpoena issued under this section is entitled to the same witness and mileage fees as a witness in proceedings in Indiana state courts. Fees payable to a witness summoned by a subpoena shall be paid by the party requesting the issuance of the subpoena, or, where the administrative law judge determines that a party is unable to pay the fees, the fees shall be paid by the ICRC.

(f) Upon a motion by the person served with a subpoena or by a party, made promptly after service of the subpoena (but in any event not less than the time specified in the subpoena for compliance), the administrative law judge may do either of the following:

(1) Quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown.

(2) Condition denial of the motion upon the advancement, by the party on whose behalf the subpoena was issued, of the reasonable cost of producing subpoenaed books, papers, or documents. Where the circumstances require, the administrative law judge may act upon such a motion at any time after a copy of the motion has been served upon the party on whose behalf the subpoena was issued.

(g) If a person fails to comply with a subpoena issued under this section, the party requesting the subpoena may enforce the matter in an appropriate proceeding under of *[sic.]* IC 4-21.5-6. *(Civil Rights Commission; 910 IAC 2-7-6; filed Aug 20, 1993, 5:00 p.m.: 17 IR 33; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)*

910 IAC 2-7-7 Prehearing procedures

Authority: IC 22-9.5-4-2

Affected: IC 4-21.5-3-19; IC 22-9.5

Sec. 7. (a) Before the commencement of the hearing, the administrative law judge may direct parties to file prehearing statements.

(b) The prehearing statement must state the name of the party or parties presenting the statement and, unless otherwise directed by the administrative law judge, briefly set forth the following:

(1) Issues involved in the proceeding.

(2) Facts stipulated by the parties and a statement that the parties have made a good faith effort to stipulate to the greatest extent possible.

(3) Facts in dispute.

(4) Witnesses, together with a summary of the testimony expected, and exhibits to be presented at the hearing.

(5) A brief statement of applicable law.

(6) Conclusions to be drawn.

(7) Estimated time required for presentation of the party's case.

(8) Such other information as may assist in the disposition of the proceeding.

(c) Before the commencement or during the course of the hearing, the administrative law judge may direct the parties to participate in a conference to expedite the hearing, in accordance with IC 4-21.5-3-19.

(d) The administrative law judge, upon the motion of a party or upon his or her own motion, may request that another administrative law judge conduct settlement negotiations. The order appointing the settlement judge may confine the scope of settlement negotiations to specified issues. The order shall direct the settlement judge to report to the presiding administrative law judge within specified time periods.

(e) The settlement judge shall do the following:

(1) Convene and preside over conferences and settlement negotiations between the parties and assess the practicalities of a potential settlement.

(2) Make a report describing:

(A) the status of the settlement negotiations; and

(B) settlement prospects; and

recommend the termination or continuation of the settlement negotiations.

(f) Settlement negotiations shall terminate upon the order of the administrative law judge acting as the settlement judge. The conduct of settlement negotiations shall not unduly delay the commencement of the hearing. (*Civil Rights Commission; 910 IAC 2-7-7; filed Aug 20, 1993, 5:00 p.m.: 17 IR 33; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 2-7-8 Hearing procedures

Authority: IC 22-9.5-4-2

Affected: IC 4-21.5-3; IC 22-9.5

Sec. 8. (a) The hearing shall commence no later than one hundred twenty (120) days following the issuance of the charge under 910 IAC 2-6-6(g), unless it is impracticable to do so. If the hearing cannot be commenced within this time period, the administrative law judge shall notify in writing all parties, the aggrieved persons on whose behalf the charge was filed, and the director of the reasons for the delay.

(b) The hearing will be conducted in Indianapolis unless otherwise ordered by the administrative law judge under 910 IAC 1-8-2.

(c) The charge issued under 910 IAC 2-6-6(g) will specify the time, date, and place for the hearing. The administrative law judge may change the time, date, or place of the hearing or may temporarily adjourn or continue a hearing for good cause shown. If such a change is made or the hearing is temporarily adjourned, the administrative law judge shall give the parties at least five (5) days notice of the revised time, date, and place for the hearing, unless otherwise agreed by the parties.

(d) The hearing shall be conducted in accordance with IC 4-21.5.

(e) If all parties waive their right to appear before the administrative law judge or to present evidence and arguments, it is not necessary for the administrative law judge to conduct an oral hearing. Such waivers shall be made in writing and filed with the administrative law judge. Where waivers are submitted by all parties, the administrative law judge shall make a record of the relevant written evidence submitted by the parties and pleadings submitted by the parties with respect to the issues in the proceeding. These documents shall constitute the evidence in the proceeding, and the decision shall be based upon this evidence. Such hearings shall be deemed to commence on the first day written evidence may be submitted for the record.

(f) IC 4-21.5-3 applies to the presentation of evidence in hearings under this rule.

(g) The administrative law judge may limit discovery or the introduction of evidence or may issue such protective or other orders necessary to protect privileged communications. If the administrative law judge determines that information in documents containing privileged matters should be made available to a party, the administrative law judge may order a summary or extract of the nonprivileged matter contained in the original.

(h) Requirements for exhibits shall be as follows:

(1) All exhibits offered into evidence shall be numbered sequentially and marked with a designation identifying the party offering the exhibit.

(2) One (1) copy of each exhibit offered into evidence must be furnished to each of the parties and to the administrative law judge. If the administrative law judge does not fix a time for the exchange of exhibits, the parties shall exchange copies of exhibits at the earliest practicable time before the commencement of the hearing. Exhibits submitted as rebuttal evidence are not required to be exchanged before the commencement of the hearing if the submission of such evidence could not reasonably be anticipated at the time.

(i) The authenticity of all documents furnished to the parties under section 15 [sic.] of this rule and submitted as proposed exhibits in advance of the hearing shall be admitted unless a party files a written objection to the exhibit before the commencement of the hearing. Upon a clear showing of good cause for failure to file such a written objection, the administrative law judge may permit the party to challenge the authenticity.

(j) The parties may stipulate to any pertinent facts by oral agreement at the hearing or by written agreement at any time. Stipulations may be submitted into evidence at any time before the end of the hearing. When received into evidence, the stipulation is binding on the parties.

(k) Requirements for a record of hearing shall be as follows:

(1) All oral hearings shall be recorded and transcribed by a reporter designated by, and under the direction of, the administrative law judge. The original transcript shall be a part of the record and shall constitute the sole official transcript. All exhibits introduced as evidence shall be marked for identification and incorporated as a part of the record.

(2) Corrections to the official transcript will be permitted upon motion of a party. Motions for correction must be submitted within five (5) days of the receipt of the transcript. Corrections of the official transcript shall be permitted only where errors of substance are involved and upon the approval of the administrative law judge.

(l) Following the submission of evidence at an oral hearing, the administrative law judge may hear oral arguments at the hearing. The administrative law judge may limit the time permitted for such arguments to avoid unreasonable delay.

(m) The administrative law judge may permit the submission of written briefs following the adjournment of the oral hearing. Written briefs shall be simultaneously filed by all parties and shall be due not later than thirty (30) days following the adjournment of the oral hearing.

(n) Where there is an oral hearing, the hearing ends on the day of the adjournment of the oral hearing or, where written briefs are permitted, on the date that the written briefs are due.

(o) Where the parties have waived an oral hearing, the hearing ends on the date set by the administrative law judge as the final date for the receipt of submissions by the parties.

(p) Following the end of the hearing, no additional evidence may be accepted into the record, except with the permission of the administrative law judge. The administrative law judge may receive additional evidence upon a determination of the following:

(1) The new and material evidence was not readily available before the end of the hearing.

(2) The evidence has been timely submitted and its acceptance will not unduly prejudice the rights of the parties.

However, the administrative law judge shall include in the record any motions for attorney's fees, including supporting documentation, and any approved corrections to the transcripts. (*Civil Rights Commission; 910 IAC 2-7-8; filed Aug 20, 1993, 5:00 p.m.: 17 IR 34; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 2-7-9 Dismissals and decisions

Authority: IC 22-9.5-4-2

Affected: IC 4-21.5-3; IC 22-9.5-6-6; IC 22-9.5-6-12

Sec. 9. (a) If the complainant, the respondent, or the aggrieved person on whose behalf a complaint was filed makes a timely election to have the claims asserted in the charge decided in a civil action under IC 22-9.5-6-12, the administrative law judge shall dismiss the administrative proceeding.

(b) An administrative law judge may not continue an administrative proceeding under this rule regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved person under an act of Congress or a state law seeking relief with respect to that discriminatory housing practice. If such a trial is commenced, the administrative law judge shall dismiss the administrative proceeding. The commencement and maintenance of a civil action for appropriate temporary or preliminary relief under IC 22-9.5-6-6 does not affect administrative proceedings under this rule.

(c) The administrative law judge shall issue an initial decision in accordance with IC 4-21.5-3-27.

(d) IC 4-21.5-3-28 and IC 4-21.5-3-29 apply to the ICRC's review of the initial decision issued by the administrative law judge, objections, and final decisions of the ICRC.

(e) At any time before the issuance of a final decision, the parties may submit an agreement resolving the charge. The agreement must be signed by the respondent, the aggrieved person upon whose behalf the charge was issued, and the director if he or she is a party or an intervenor. The administrative law judge shall accept the agreement by issuing an initial decision based on the agreed findings. The submission of an agreement resolving the charge constitutes a waiver of any right to challenge or contest the validity of a decision entered in accordance with the agreement.

(f) If the commissioners remand the decision for further proceedings, such remand shall be conducted in accordance with IC 4-21.5-3-29(g).

(g) Following the issuance of the final decision, any prevailing party except the ICRC may apply for attorney's fees and costs. The administrative law judge shall issue an initial decision awarding or denying such fees and costs. The initial decision shall become the final decision of the ICRC unless the ICRC reviews the initial decision and issues a final decision on fees and costs within thirty (30) days. The recovery of reasonable attorney's fees and costs will be permitted as follows:

(1) If the respondent is the prevailing party an intervenor shall be liable for reasonable attorney's fees and costs only to the extent that the intervenor's participation in the administrative proceeding is frivolous, vexatious, or was for the purpose of harassment.

(2) To the extent that an intervenor is the prevailing party, the respondent shall be liable for reasonable attorney's fees and costs unless special circumstances make the recovery of such fees and costs unjust.

(Civil Rights Commission; 910 IAC 2-7-9; filed Aug 20, 1993, 5:00 p.m.: 17 IR 35; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

910 IAC 2-7-10 Judicial review and enforcement of final decision

Authority: IC 22-9.5-4-2

Affected: IC 4-21.5-5; IC 4-21.5-6; IC 22-9-1; IC 22-9.5

Sec. 10. (a) Any party adversely affected by a final decision under section 9 of this rule may file a petition in the appropriate state court for review of the decision under IC 4-21.5-5.

(b) Following the issuance of a final decision under section 9 of this rule, the ICRC may petition the appropriate state court for the enforcement of the final decision in accordance with IC 4-21.5-6. *(Civil Rights Commission; 910 IAC 2-7-10; filed Aug 20, 1993, 5:00 p.m.: 17 IR 36; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)*

Rule 8. Fair Housing Advertising

910 IAC 2-8-1 Policy

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5-3-4; IC 22-9.5-5-2

Sec. 1. IC 22-9.5 makes it unlawful to discriminate in:

(1) the sale, rental, and financing of housing;

(2) the provision of brokerage and appraisal service;

because of race, color, religion, sex, handicap, familial status, or national origin. IC 22-9.5-5-2 makes it unlawful to make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, or national origin or an intention to make any such preference, limitation, or discrimination. However, the prohibitions of IC 22-9.5 regarding familial status do not apply with respect to housing for older persons as defined in IC 22-9.5-3-4. *(Civil Rights Commission; 910 IAC 2-8-1; filed Aug 20, 1993, 5:00 p.m.: 17 IR 36; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)*

910 IAC 2-8-2 Purpose

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 2. The purpose of this rule is to assist all advertising media, advertising agencies, and other persons who use advertising to make, print, or publish or cause to be made, printed, or published advertisements with respect to the sale, rental, or financing of dwellings which are in compliance with the requirements of IC 22-9.5. This rule also describes the matters the ICRC will review in evaluating compliance with IC 22-9.5 in connection with investigations of complaints alleging discriminatory housing practices involving advertising. (*Civil Rights Commission; 910 IAC 2-8-2; filed Aug 20, 1993, 5:00 p.m.: 17 IR 36; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 2-8-3 Scope

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 3. (a) This rule describes the matters the ICRC will review in evaluating compliance with IC 22-9.5 in connection with investigations of complaints alleging discriminatory housing practices involving advertising. Use of this rule will be considered by the director in making determinations as to whether there is reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

(b) This rule provides criteria for use by advertising media in determining whether to accept and publish advertising regarding sales or rental transactions. Use of this rule will be considered by the director in making a determination as to whether there is reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

(c) A failure by a person placing an advertisement to use the criteria contained in this rule, when found in connection with the investigation of a complaint alleging making or using discriminatory advertisements, shall be considered by the director in making a determination of reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

(d) Nothing in this rule shall be construed to restrict advertising efforts designed to attract persons to dwellings who would not ordinarily be expected to apply, when such efforts are pursuant to an affirmative marketing program or undertaken to remedy the effects of prior discrimination in connection with the advertising or marketing of dwellings. (*Civil Rights Commission; 910 IAC 2-8-3; filed Aug 20, 1993, 5:00 p.m.: 17 IR 36; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 2-8-4 Use of words, phrases, symbols, and visual aids

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5-3-4

Sec. 4. The words, phrases, symbols, and forms listed in this section typify those most often used in residential real estate advertising to convey either overt or tacit discriminatory preferences or limitations. In considering a complaint under IC 22-9.5, the ICRC will normally consider the use of the following comparable words, phrases, symbols, and forms to indicate a possible violation of IC 22-9.5 and to establish a need for further proceedings on the complaint if it is apparent from the context of the usage that discrimination within the meaning of IC 22-9.5 is likely to result:

(1) Words descriptive of dwelling, landlord, and tenants, including, but not limited to, the following:

- (A) White private home.
- (B) Colored home.
- (C) Jewish home.
- (D) Hispanic residence.
- (E) Adult building.

(2) Words indicative of race, color, religion, sex, handicap, familial status, or national origin, including, but not limited to, the following:

(A) Words indicative of race, including, but not limited to:

- (i) Negro.
- (ii) Black.
- (iii) Caucasian.
- (iv) Oriental.
- (v) American Indian.

(B) Words indicative of color, including, but not limited to, the following:

- (i) White.

- (ii) Black.
- (iii) Colored.
- (C) Words indicative of religion, including, but not limited to, the following:
 - (i) Protestant.
 - (ii) Christian.
 - (iii) Catholic.
 - (iv) Jew.
- (D) Words indicative of national origin, including, but not limited to, the following:
 - (i) Mexican American.
 - (ii) Puerto Rican.
 - (iii) Philippine.
 - (iv) Polish.
 - (v) Hungarian.
 - (vi) Irish.
 - (vii) Italian.
 - (viii) Chicano.
 - (ix) African.
 - (x) Hispanic.
 - (xi) Chinese.
 - (xii) Indian.
 - (xiii) Latino.
- (E) The exclusive use of words in advertisements, including those involving the rental of separate units in a single-family or multiple-family dwelling, stating or tending to imply that the housing being advertised is available to persons of only one (1) sex and not the other, except where sharing living areas is involved. Nothing in this rule restricts advertisement of a dwelling used exclusively for dormitory facilities by educational institutions.
- (F) Words indicative of handicap, including, but not limited to, the following:
 - (i) Crippled.
 - (ii) Blind.
 - (iii) Deaf.
 - (iv) Mentally ill.
 - (v) Mentally retarded.
 - (vi) Impaired.
 - (vii) Handicapped.
 - (viii) Physically fit.
- Nothing in this rule restricts the inclusion of information about the availability of accessible housing in advertising a dwelling.
- (G) Words indicative of familial status, including, but not limited to, the following:
 - (i) Adults.
 - (ii) Children.
 - (iii) Singles.
 - (iv) Mature persons.
- Nothing in this rule restricts advertisement of a dwelling which is intended and operated for occupancy by older persons and which constitutes housing for older persons as defined in IC 22-9.5-3-4.
- (H) Words and phrases, such as any of the following used in a discriminatory context should be avoided:
 - (i) Restricted.
 - (ii) Exclusive.
 - (iii) Private.
 - (iv) Integrated.
 - (v) Traditional.
 - (vi) Board approval.
 - (vii) Membership approval.

- (3) A symbol or logotype which imply [*sic.*, *implies*] or suggest [*sic.*, *suggests*] any of the following:
 - (A) Race.
 - (B) Color.
 - (C) Religion.
 - (D) Sex.
 - (E) Handicap.
 - (F) Familial status.
 - (G) National origin.
- (4) Words or phrases used regionally or locally which imply or suggest any of the following:
 - (A) Race.
 - (B) Color.
 - (C) Religion.
 - (D) Sex.
 - (E) Handicap.
 - (F) Familial status.
 - (G) National origin.
- (5) Directions which imply a discriminatory preference, limitation, or exclusion. The following are examples:
 - (A) A reference to a real estate location made in terms of a significant landmark of racial or national origin such as:
 - (i) an existing black development which may be a signal to blacks; or
 - (ii) an existing development known for its exclusion of minorities which may be a signal to whites.
 - (B) Specific directions which make a reference to a significant area of racial or national origin may indicate a racial preference.
 - (C) A reference to a synagogue, congregation, or parish may indicate a religious preference.
- (6) Names of facilities which cater to a particular racial, national origin, or religious group such as country club or private school designations or names of facilities which are used exclusively by one (1) sex may indicate a preference.

(*Civil Rights Commission; 910 IAC 2-8-4; filed Aug 20, 1993, 5:00 p.m.: 17 IR 37; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942*)

910 IAC 2-8-5 Selective use of advertising media or content

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 5. The selective use of advertising media or content when particular combinations thereof are used exclusively with respect to various housing developments or sites can lead to discriminatory results and may indicate a violation of IC 22-9.5. For example, the use of English language media alone or the exclusive use of media catering to the majority population in an area, when, in such area, there are also available non-English language or other minority media may have discriminatory impact. Similarly, the selective use of human models in advertisements may have discriminatory impact. The following are examples of the selective use of advertisement which may be discriminatory:

- (1) Selective geographic advertisement may involve the following:
 - (A) Strategic placement of billboards.
 - (B) Brochure advertisements distributed within a limited geographic area by hand or in the mail.
 - (C) Advertising in particular geographic coverage editions of major metropolitan newspapers or in newspapers of limited circulation which are mainly advertising vehicles for reaching a particular segment of the community.
 - (D) Displays or announcements available only in selected sales office [*sic.*, *offices*].
- (2) Selective use of an equal opportunity slogan or logotype. When placing advertisements, use may involve placing the equal housing opportunity slogan or logotype in advertising reaching some geographic areas but not others or with respect to some properties but not others.
- (3) Selective advertising may involve an advertising campaign using human models primarily in media that cater to one (1) racial or national origin segment of the population without a complementary advertising campaign that is directed at other groups. Another example may involve use of racially mixed models by a developer to advertise one (1) development and not others. Similar care must be exercised in advertising in publications or other media directed at one (1) particular sex or at

persons without children. Such selective advertising may involve the use of human models of members of only one (1) sex or of adults only in displays, photographs, or drawings to indicate preferences for one (1) sex or the other or for adults to the exclusion of children.

(Civil Rights Commission; 910 IAC 2-8-5; filed Aug 20, 1993, 5:00 p.m.: 17 IR 38; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

910 IAC 2-8-6 Fair housing policy and practices

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 6. (a) In the investigation of complaints, the director will consider the implementation of fair housing policies and practices provided in this section as evidence of compliance with the prohibitions against discrimination in advertising under IC 22-9.5.

(b) All advertising of residential real estate for sale, rent, or financing should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the home-seeking public that the property is available to all persons regardless of race, color, religion, sex, handicap, familial status, or national origin. The choice of logotype, statement, or slogan will depend on the type of media used (visual or auditory) and, in space advertising in regularly printed media such as newspapers or magazines, on the size of the advertisement. Section 7(b) of this rule provides suggested use of the logotype, statement, or slogan and size of the logotype. Section 7(c) of this rule contains examples of the suggested Equal Housing Opportunity logotype, statement, or slogan.

(c) Human models in photographs, drawings, or other graphic techniques may not be used to indicate exclusiveness because of race, color, religion, sex, handicap, familial status, or national origin. If models are used in display advertising campaigns, the models should be clearly definable as reasonably representing majority and minority groups in the metropolitan area, both sexes, and, when appropriate, families with children. Models, if used, should portray persons in an equal social setting and indicate to the general public that the housing is open to all without regard to race, color, religion, sex, handicap, familial status, or national origin, and is not for the exclusive use of one (1) such group.

(d) Where the Equal Housing Opportunity statement is used, the advertisement may also include a statement regarding the coverage of any federal or local fair housing or human rights ordinance prohibiting discrimination in the sale, rental, or financing of a dwelling.

(e) All publishers of advertisements, advertising agencies, and firms engaged in the sale, rental, or financing of real estate should provide a printed copy of their nondiscrimination policy to each employee and officer.

(f) All publishers of advertisements and advertising agencies shall:

(1) post a copy of their nondiscrimination policy in a conspicuous location wherever persons place advertising; and

(2) have copies available for all firms and persons using their advertising services.

(g) All publishers should publish at the beginning of the real estate advertising section a notice such as that appearing in section 7(d) of this rule. The notice may include a statement regarding the coverage of any local fair housing or human rights ordinance prohibiting discrimination in the sale, rental, or financing of a dwelling. *(Civil Rights Commission; 910 IAC 2-8-6; filed Aug 20, 1993, 5:00 p.m.: 17 IR 38; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)*

910 IAC 2-8-7 Suggested use of logotypes, statements, slogans, or publisher's notices for advertising

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 7. (a) This section contains information which may serve as a guide for the use of the Equal Housing Opportunity logotype, statement, slogan, or publisher's notice for advertising.

(b) A simple formula can guide the real estate advertiser in using the Equal Housing Opportunity logotype, statement, or slogan, including the following:

(1) In all space advertising (advertising in regularly printed media such as newspapers or magazines), the following standards shall be used:

Size of Advertisement	Size of Logotype in Inches
1/2 page or larger	2 × 2

1/8 page up to 1/2 page	1 × 1
4 column inches to 1/8 page	1/2 × 1/2
Less than 4 column inches	(')

(2) In any other advertisements, if other logotypes are use *[sic., used]* in the advertisement, then the Equal Housing Opportunity logotype should be a size at least equal to the largest of the other logotypes; if no other logotypes are used, then the type should be bold display face which is clearly visible. Alternatively, when no other logotypes are used, three percent (3%) to five percent (5%) of an advertisement may be devoted to a statement of the equal housing opportunity policy.

(3) In space advertising which is less than four (4) column inches (one (1) column four (4) inches long or two (2) columns two (2) inches long) of a page in size, the Equal Housing Opportunity slogan should be used. Such an advertisement may be grouped with other advertisements under a caption which states that the housing is available to all without regard to race, color, religion, sex, handicap, familial status, or national origin.

(c) The following are illustrations of logotypes, statements, or slogans with the Equal Housing Opportunity logotype:

(1) An example of the Equal Housing Opportunity statement shall be, "We are pledged to the letter and spirit of the State of Indiana's policy for the achievement of equal housing opportunity throughout the state. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, handicap, familial status, or national origin."

(2) An example of the Equal Housing Opportunity slogan shall be, "Equal Housing Opportunity."

(d) The following are illustrations of a media notice or publisher's notice:

(1) "All real estate advertised herein is subject to the Federal Fair Housing Act, which makes it illegal to advertise any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, or national origin or intention to make any such preference, limitation, or discrimination."

(2) "We will not knowingly accept any advertising for real estate which is in violation of the law. All persons are hereby informed that all dwellings advertised are available on an equal opportunity basis."

(Civil Rights Commission; 910 IAC 2-8-7; filed Aug 20, 1993, 5:00 p.m.: 17 IR 39; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

Rule 9. Fair Housing Poster

910 IAC 2-9-1 Fair housing poster

Authority: IC 22-9.5-4-2

Affected: IC 22-9.5

Sec. 1. (a) This rule contains procedures established by the ICRC with respect to the display of a fair housing poster by persons subject to IC 22-9.5.

(b) All persons subject to IC 22-9.5 shall post and maintain a fair housing poster at all their places of business that participate in the covered activities.

(c) All fair housing posters shall be prominently displayed so as to be readily apparent to all persons seeking housing accommodations or seeking to engage in residential real estate related transactions or brokerage services as contemplated by IC 22-9.5.

(d) The fair housing poster shall be eleven (11) inches by fourteen (14) inches and shall bear the following legend:



EQUAL HOUSING OPPORTUNITY
We Do Business In Accordance With
The Fair Housing Act
(The Indiana Civil Rights Law, as amended by the Fair
Housing Amendments Act of 1990 and 1992)
IT IS ILLEGAL TO DISCRIMINATE AGAINST

CIVIL RIGHTS COMMISSION

ANY PERSON BECAUSE OF RACE, COLOR,
RELIGION, SEX, HANDICAP, FAMILIAL
STATUS (HAVING ONE OR MORE CHILDREN),
OR NATIONAL ORIGIN

- In the sale or rental of housing or residential lots
- In advertising the sale or rental of housing
- In the financing of housing
- In the appraisal of housing
- In the provision of real estate brokerage services

Anyone who feels he or she has been discriminated against should send a complaint to:

Indiana Civil Rights Commission
Indiana Government Center-North
100 North Senate Avenue, Room 103
Indianapolis, Indiana 46204

(Civil Rights Commission; 910 IAC 2-9-1; filed Aug 20, 1993, 5:00 p.m.: 17 IR 40; readopted filed Oct 25, 2001, 2:15 p.m.: 25 IR 942)

ARTICLE 3. ENTITLED EMPLOYMENT DISCRIMINATION AGAINST DISABLED PERSONS

Rule 1. Purpose; Applicability; Construction

910 IAC 3-1-1 Purpose

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 1. The purpose of this article is to implement IC 22-9-5 that requires equal employment opportunities for qualified individuals with disabilities. *(Civil Rights Commission; 910 IAC 3-1-1; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1516)*

910 IAC 3-1-2 Applicability

Authority: IC 22-9-5-27

Affected: IC 22-9-5-4

Sec. 2. This article applies to covered entities as defined at IC 22-9-5-4(c). *(Civil Rights Commission; 910 IAC 3-1-2; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1516)*

910 IAC 3-1-3 Construction

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 3. (a) Except as otherwise provided in this article, this article does not apply a lesser standard than the standards applied under Title V of the Rehabilitation Act of 1973 (29 U.S.C. 790-794a), or the regulations issued by federal agencies pursuant to that title.

(b) This article does not invalidate or limit the remedies, rights, and procedures of any state law or political subdivision of the state or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this article. *(Civil Rights Commission; 910 IAC 3-1-3; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1516)*

Rule 2. Definitions

910 IAC 3-2-1 Applicability

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 1. The definitions in this rule apply throughout this article. (*Civil Rights Commission; 910 IAC 3-2-1; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1516*)

910 IAC 3-2-2 “Commerce” defined

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 2. “Commerce” has the meaning as set forth in Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 20000e). (*Civil Rights Commission; 910 IAC 3-2-2; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1516*)

910 IAC 3-2-3 “Direct threat” defined

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 3. “Direct threat” means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual poses a direct threat shall be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge or on the best available objective evidence. In determining whether an individual would pose a direct threat, the following factors must be considered:

- (1) The duration of the risk.
- (2) The nature and severity of the potential harm.
- (3) The likelihood that the potential harm will occur.
- (4) The imminence of the potential harm.

(*Civil Rights Commission; 910 IAC 3-2-3; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1516*)

910 IAC 3-2-4 “Disability” defined

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 4. (a) “Disability” does not include an individual currently engaging in the illegal use of drugs when the covered entity acts on the basis of such use. The following definitions apply throughout this section:

(1) “Drug” means a controlled substance as defined in Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812).

(2) “Illegal use of drugs” means the use of drugs the possession or distribution of which is unlawful under the Controlled Substances Act as periodically updated by the Food and Drug Administration. The term does not include the use of a drug taken under the supervision of a licensed health care professional or other uses authorized by the Controlled Substances Act or other provisions of federal law.

(b) The term may not exclude an individual who:

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use.

(c) It shall not be a violation of this article for a covered entity to adopt or administer reasonable policies or procedures, including, but not limited to, drug testing designed to ensure that an individual described in subsection (b) is no longer engaging in the illegal use of drugs.

(d) The term does not include the following:

(1) Transvestitism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders.

(2) Compulsive gambling, kleptomania, or pyromania.

(3) Psychoactive substance use disorders resulting from current illegal use of drugs.

(e) Homosexuality and bisexuality are not impairments and so are not disabilities as defined in this article. (*Civil Rights*

Commission; 910 IAC 3-2-4; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1516)

910 IAC 3-2-5 “Employment agency” defined

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 5. “Employment agency” has the meaning as set forth in Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 20000e). *(Civil Rights Commission; 910 IAC 3-2-5; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1517)*

910 IAC 3-2-6 “Essential functions” defined

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 6. (a) “Essential functions” means the fundamental job duties of the employment position the individual with a disability holds or desires. The term does not include the marginal functions of the position. A job function may be considered essential for any of several reasons, including, but not limited to, the following:

- (1) The function may be essential because the reason the position exists is to perform that function.
- (2) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.
- (3) The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.
- (b) Evidence of whether a particular function is essential includes, but is not limited to, the following:
 - (1) The employer's judgment as to which functions are essential.
 - (2) Written job descriptions prepared before advertising or interviewing applicants for the job.
 - (3) The amount of time spent on the job performing the function.
 - (4) The consequences of not requiring the incumbent to perform the function.
 - (5) The terms of a collective bargaining agreement.
 - (6) The work experience of past incumbents in the job.
 - (7) The current work experience of incumbents in similar jobs.

(Civil Rights Commission; 910 IAC 3-2-6; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1517)

910 IAC 3-2-7 “Has a record of such impairment” defined

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 7. “Has a record of such impairment” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one (1) or more major life activities. Is regarded as having such an impairment means:

- (1) has a physical or mental impairment that does not substantially limit major life activities but is treated by a covered entity as constituting such limitation;
- (2) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or
- (3) has none of the impairments defined in section 10 of this rule but is treated by a covered entity as having a substantially limiting impairment.

(Civil Rights Commission; 910 IAC 3-2-7; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1517)

910 IAC 3-2-8 “Industry affecting commerce” defined

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 8. “Industry affecting commerce” has the meaning as set forth in Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 20000e). *(Civil Rights Commission; 910 IAC 3-2-8; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1518)*

910 IAC 3-2-9 “Major life activity” defined

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 9. “Major life activity” means a function, such as the following:

- (1) Caring for oneself.
- (2) Performing a manual task.
- (3) Walking.
- (4) Seeing.
- (5) Hearing.
- (6) Speaking.
- (7) Breathing.
- (8) Learning.
- (9) Working.

(Civil Rights Commission; 910 IAC 3-2-9; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1518)

910 IAC 3-2-10 “Person” defined

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 10. “Person” has the meaning as set forth in Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 20000e). *(Civil Rights Commission; 910 IAC 3-2-10; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1518)*

910 IAC 3-2-11 “Physical or mental impairment” defined

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 11. “Physical or mental impairment” means the following:

(1) Any physiological disorder, condition, cosmetic disfigurement, or anatomical loss affecting one (1) or more of the following body systems:

- (A) Neurological.
- (B) Musculoskeletal.
- (C) Special sense organs.
- (D) Respiratory, including speech organs.
- (E) Cardiovascular.
- (F) Reproductive.
- (G) Digestive.
- (H) Genito-urinary.
- (I) Hemic and lymphatic.
- (J) Skin.
- (K) Endocrine.

(2) Any mental or psychological disorder, such as the following:

- (A) Mental retardation.
- (B) Organic brain syndrome.
- (C) Emotional or mental illness.
- (D) Specific learning disabilities.

(Civil Rights Commission; 910 IAC 3-2-11; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1518)

910 IAC 3-2-12 “Qualification standards” defined

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 12. "Qualification standards" means the personal and professional attributes, including:

- (1) skill;
- (2) experience;
- (3) education;
- (4) physical;
- (5) medical;
- (6) safety; and
- (7) other requirements;

established by a covered entity as requirements that an individual must meet in order to be eligible for the position held or desired. (*Civil Rights Commission; 910 IAC 3-2-12; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1518*)

910 IAC 3-2-13 "Qualified individual with a disability" defined

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 13. (a) "Qualified individual with a disability" means an individual with a disability:

(1) who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires; and

(2) with or without reasonable accommodation, can perform the essential functions of such position.

(b) The term does not include individuals currently engaging in the illegal use of drugs when the covered entity acts on the basis of such use. The following definitions apply throughout this section:

(1) "Drug" means a controlled substance as defined in Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812).

(2) "Illegal use of drugs" means the use of drugs the possession or distribution of which is unlawful under the Controlled Substances Act as periodically updated by the Food and Drug Administration. The term does not include the use of a drug taken under the supervision of a licensed health care professional or other uses authorized by the Controlled Substances Act or other provisions of federal law.

(c) The term may not exclude an individual who:

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use.

(d) It shall not be a violation of this article for a covered entity to adopt or administer reasonable policies or procedures, including, but not limited to, drug testing, designed to ensure that an individual described in subsection (c) is no longer engaging in the illegal use of drugs.

(e) Homosexuality and bisexuality are not impairments and so are not disabilities as defined in this article. (*Civil Rights Commission; 910 IAC 3-2-13; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1518*)

910 IAC 3-2-14 "Reasonable accommodation" defined

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 14. (a) "Reasonable accommodation" means modifications or adjustments:

(1) to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires;

(2) to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or

(3) that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.

(b) The term may include, but is not limited to, the following:

(1) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities.

- (2) Job restructuring.
- (3) Part-time or modified work schedules.
- (4) Reassignment to a vacant position.
- (5) Acquisition or modifications of equipment or devices.
- (6) Appropriate adjustment or modifications of examinations, training materials, or policies.
- (7) The provision of qualified readers or interpreters.
- (8) Other similar accommodations for individuals with disabilities.

(c) To determine the appropriate reasonable accommodation, it may be necessary for the covered entity to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations. (*Civil Rights Commission; 910 IAC 3-2-14; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1519*)

910 IAC 3-2-15 “Substantially limits” defined

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 15. (a) “Substantially limits” means the following:

- (1) An individual is unable to perform a major life activity that the average person in the general population can perform.
- (2) An individual is significantly restricted as to the condition, manner, or duration under which he or she can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.
- (b) The following factors should be considered in determining whether an individual is substantially limited in a major life activity:

- (1) The nature and severity of the impairment.
- (2) The duration or expected duration of the impairment.
- (3) The permanent or long term impact, or the expected permanent or long term impact, of or resulting from the impairment.

(c) With respect to the major life activity of working, the term means an individual is significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills, and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.

(d) In addition to the factors listed in subsection (b), the following factors may be considered in determining whether an individual is substantially limited in the major life activity of working:

- (1) The geographical area to which the individual has reasonable access.
- (2) The job from which the individual has been disqualified because of an impairment, and the number and types of jobs utilizing similar training, knowledge, skills, or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (class of jobs).
- (3) The job from which the individual has been disqualified because of an impairment, and the number and types of other jobs not utilizing similar training, knowledge, skills, or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (broad range of jobs in various classes).

(*Civil Rights Commission; 910 IAC 3-2-15; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1519*)

910 IAC 3-2-16 “Undue hardship” defined

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 16. (a) “Undue hardship”, with respect to the provision of an accommodation, means significant difficulty or expense incurred by a covered entity when considered in light of the factors as set forth in section 13 of this rule.

(b) In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include the following:

- (1) The nature and net cost of the accommodation needed under this rule, taking into consideration the availability of tax credits and deductions or outside funding.

- (2) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources.
- (3) The overall financial resources of the covered entity, the overall size of the business of the covered entity with respect to the number of its employees, and the number, type, and location of its facilities.
- (4) The type of operation or operations of the covered entity, including the following:
 - (A) Composition, structure, and function of the workforce of such entity.
 - (B) The geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity.
- (5) The impact of the accommodation upon the operation of the facility, including the following:
 - (A) The impact on the ability of other employees to perform their duties.
 - (B) The impact on the facility's ability to conduct business.

(Civil Rights Commission; 910 IAC 3-2-16; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1520)

Rule 3. General Provisions

910 IAC 3-3-1 Discrimination prohibited

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 1. (a) It is unlawful for a covered entity to discriminate on the basis of disability against a qualified individual with a disability in regard to the following:

- (1) Recruitment, advertising, and job application procedures.
- (2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring.
- (3) Rates of pay or any other form of compensation and changes in compensation.
- (4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.
- (5) Leave of absence, sick leave, or any other leave.
- (6) Fringe benefits available by virtue of employment, whether or not administered by the covered entity.
- (7) Selection and financial support for training, including the following:
 - (A) Apprenticeships.
 - (B) Professional meetings, conferences, and other related activities.
 - (C) Selection for a leave of absence to pursue training.
- (8) An activity sponsored by a covered entity, including social and recreational programs.
- (9) Any other term, condition, or privilege of employment.

(b) As used in this section, "discrimination" includes, but is not limited to, the acts described in sections 2 through 10 of this rule. *(Civil Rights Commission; 910 IAC 3-3-1; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1520)*

910 IAC 3-3-2 Limiting; segregating; classifying

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 2. It is unlawful for a covered entity to limit, segregate, or classify a job applicant or employee in a way that adversely affects his or her employment opportunities or status on the basis of disability. *(Civil Rights Commission; 910 IAC 3-3-2; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1520)*

910 IAC 3-3-3 Contractual or other arrangements

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 3. (a) It is unlawful for a covered entity to participate in a contractual or other arrangement or relationship that has the

effect of subjecting the covered entity's own qualified applicant or employee with a disability to the discrimination prohibited by this article.

(b) As used in this section, "contractual or other arrangement or relationship" includes, but is not limited to, the following:

- (1) A relationship with an employment or referral agency.
- (2) A labor union, including collective bargaining agreements.
- (3) An organization providing fringe benefits to an employee of the covered entity.
- (4) An organization providing training and apprenticeship programs.

(c) This section applies to a covered entity, with respect to its own applicants or employees, whether the entity offered the contract or initiated the relationship, or whether the entity accepted the contract or acceded to the relationship. A covered entity is not liable for the actions of the other party or parties to the contract that only affect that other party's employees or applicants. (*Civil Rights Commission; 910 IAC 3-3-3; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1520*)

910 IAC 3-3-4 Standards, criteria, or methods of administration

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 4. It is unlawful for a covered entity to use standards, criteria, or methods of administration, which are not job-related and consistent with business necessity, and that:

- (1) have the effect of discriminating on the basis of disability; or
- (2) perpetuate the discrimination of others who are subject to common administrative control.

(*Civil Rights Commission; 910 IAC 3-3-4; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1521*)

910 IAC 3-3-5 Relationship or association with an individual with a disability

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 5. It is unlawful for a covered entity to exclude or deny equal jobs or benefits to, or otherwise discriminate against, a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a family, business, social, or other relationship or association. (*Civil Rights Commission; 910 IAC 3-3-5; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1521*)

910 IAC 3-3-6 Not making reasonable accommodation

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 6. (a) It is unlawful for a covered entity not to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

(b) It is unlawful for a covered entity to deny employment opportunities to an otherwise qualified job applicant or employee with a disability based on the need of such covered entity to make reasonable accommodation to such individual's physical or mental impairments.

(c) A covered entity shall not be excused from the requirements of this article because of any failure to receive technical assistance authorized by Section 506 of the Americans with Disability Act, including any failure in the development or dissemination of any technical assistance manual authorized by that Act.

(d) A qualified individual with a disability is not required to accept an accommodation, aid, service, opportunity, or benefit which such qualified individual chooses not to accept. However, if such individual rejects a reasonable accommodation, aid, service, opportunity, or benefit that is necessary to enable the individual to perform the essential functions of the position held or desired, and cannot, as a result of that rejection, perform the essential functions of the position, the individual will not be considered a qualified individual with a disability. (*Civil Rights Commission; 910 IAC 3-3-6; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1521*)

910 IAC 3-3-7 Qualification standards, tests, and other selection criteria

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 7. It is unlawful for a covered entity to use qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, on the basis of disability, unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity. (*Civil Rights Commission; 910 IAC 3-3-7; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1521*)

910 IAC 3-3-8 Administration of tests

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 8. It is unlawful for a covered entity to fail to select and administer tests concerning employment in the most effective manner to ensure that, when a test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure). (*Civil Rights Commission; 910 IAC 3-3-8; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1521*)

910 IAC 3-3-9 Retaliation and coercion

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 9. (a) It is unlawful to discriminate against any individual because that individual has opposed any act or practice made unlawful by this article or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing to enforce any provision contained in this article.

(b) It is unlawful to coerce, intimidate, threaten, harass, or interfere with any individual in the exercise or enjoyment of, or because that individual aided or encouraged any other individual in the exercise of, any right granted or protected by this article. (*Civil Rights Commission; 910 IAC 3-3-9; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1521*)

910 IAC 3-3-10 Prohibited medical examinations and inquiries

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 10. (a) Except as permitted by section 11 of this rule, it is unlawful for a covered entity to conduct a medical examination of an applicant or to make inquiries as to whether an applicant is an individual with a disability or as to the nature or severity of such disability.

(b) Except as permitted by section 11 of this rule, it is unlawful for a covered entity to require a medical examination of an employee or to make inquiries as to whether an employee is an individual with a disability or as to the nature or severity of such disability. (*Civil Rights Commission; 910 IAC 3-3-10; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1522*)

910 IAC 3-3-11 Medical examinations and inquiries specifically permitted

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 11. (a) A covered entity may:

- (1) make preemployment inquiries into the ability of an applicant to perform job-related functions; or
- (2) ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions.

(b) A covered entity may:

(1) require a medical examination (or inquiry) after making an offer of employment to a job applicant and before the applicant begins his or her employment duties; and

(2) condition an offer of employment on the results of such examination (or inquiry), if all entering employees in the same job category are subjected to such an examination (or inquiry) regardless of disability.

(c) Information obtained under subsection (b) regarding the medical condition or history of the applicant shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, with the following exceptions:

(1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations.

(2) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.

(3) Government officials investigating compliance with this article shall be provided relevant information on request.

The results of such examination shall not be used for any purpose inconsistent with this article.

(d) Medical examinations conducted in accordance with this section do not have to be job-related and consistent with business necessity. However, if certain criteria are used to screen out an employee or employees with disabilities as a result of such an examination or inquiry, the exclusionary criteria must be job-related and consistent with business necessity, and performance of the essential job functions cannot be accomplished with reasonable accommodation as required in this article.

(e) A covered entity may:

(1) require a medical examination (or inquiry) of an employee that is job-related and consistent with business necessity; and

(2) make inquiries into the ability of an employee to perform job-related functions.

(f) Information obtained under subsection (e) regarding the medical condition or history of any employee shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, with the following exceptions:

(1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations.

(2) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.

(3) Government officials investigating compliance with this article shall be provided relevant information on request.

(g) Information obtained under subsection (e) regarding the medical condition or history of any employee shall not be used for any purpose inconsistent with this article.

(h) A covered entity may conduct voluntary medical examinations and activities, including voluntary medical histories, that are part of an employee health program available to employees at the work site.

(i) Information obtained under subsection (h) regarding the medical condition or history of any employee shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, with the following exceptions:

(1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations.

(2) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.

(3) Government officials investigating compliance with this part shall be provided relevant information on request.

(j) Information obtained under subsection (h) regarding the medical condition or history of any employee shall not be used for any purpose inconsistent with this article. (*Civil Rights Commission; 910 IAC 3-3-11; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1522*)

910 IAC 3-3-12 Defenses

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 12. Defenses to an allegation of discrimination under this section may include, but are not limited to, the following:

(1) It may be a defense to a charge of disparate treatment brought under sections 1 through 5 and 8 through 9 of this rule that the challenged action is justified by a legitimate, nondiscriminatory reason.

(2) It may be a defense to a charge of discrimination, as described in section 7 of this rule, that an alleged application of qualification standards, tests, or selection criteria that screens out or tends to screen out or otherwise denies a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished with reasonable accommodation, as required in this article.

(3) It may be a defense to a charge of discrimination brought under this article that a uniformly applied standard, criterion, or policy has a disparate impact on an individual with a disability or a class of individuals with disabilities that the challenged standard, criterion, or policy has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished with reasonable accommodation, as required in this article.

(4) It may be a defense to a charge of discrimination, as described in section 6 of this rule, that a requested or necessary accommodation would impose an undue hardship on the operation of the covered entity's business.

(5) It may be a defense to a charge of discrimination under this article that:

(A) a challenged action is required or necessitated by another federal law or regulation; or

(B) another federal law or regulation prohibits an action (including the provision of a particular reasonable accommodation) that would otherwise be required by this article.

(6) It may be a defense to a charge of discrimination under this article that the alleged discriminatory action is specifically permitted by section 11 or 13 of this rule.

As used in this section, "qualification standard" may include a requirement that an individual shall not pose a direct threat to the health or safety of the individual or others in the workplace. (*Civil Rights Commission; 910 IAC 3-3-12; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1523*)

910 IAC 3-3-13 Specific activities permitted

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 13. A religious corporation, association, educational institution, or society is permitted to give preference in employment to individuals of a particular religion to perform work connected with the carrying on by that corporation, association, educational institution, or society of its activities. A religious entity may require that all applicants and employees conform to the religious tenets of such organization. However, a religious entity may not discriminate against a qualified individual who satisfies the permitted religious criteria because of his or her disability. (*Civil Rights Commission; 910 IAC 3-3-13; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1523*)

910 IAC 3-3-14 Alcohol and drugs

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 14. With regard to alcohol and drugs, a covered entity may do the following:

(1) Prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees.

(2) Require that employees not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace.

(3) Require that all employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.).

(4) Hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior to which the entity holds its other employees, even if any unsatisfactory performance or behavior is related to the employee's drug use or alcoholism.

(5) Require that its employees employed in an industry subject to such regulations comply with the standards established in the regulations (if any) of the:

(A) Departments of Defense and Transportation; and

(B) Nuclear Regulatory Commission;

regarding alcohol and the illegal use of drugs.

(6) Require that employees employed in sensitive positions comply with the regulations (if any) of the Departments of Defense and Transportation and of the Nuclear Regulatory Commission that apply to employment in sensitive positions subject to such regulations.

(*Civil Rights Commission; 910 IAC 3-3-14; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1523*)

910 IAC 3-3-15 Drug testing

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 15. (a) For purposes of this section, a test to determine the illegal use of drugs is not considered a medical examination. Thus, the administration of such a drug test by a covered entity to a job applicant or employee is not a violation of section 10 of this rule. However, this section does not encourage, prohibit, or authorize a covered entity to conduct s [sic.] drug test of s [sic.] job applicant or employee to determine the illegal use of drugs or to make an employment decision based on such test results.

(b) This section does not encourage, prohibit, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to do the following:

(1) Test employees of entities in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs or for on-duty impairment by alcohol.

(2) Remove from safety-sensitive positions persons who test positive for illegal use of drugs or on-duty impairment by alcohol under subdivision (1).

(c) Any information regarding the medical condition or history of any employee or applicant obtained from a test to determine the illegal use of drugs, except information regarding the illegal use of drugs, is subject to section 11 of this rule. (*Civil Rights Commission; 910 IAC 3-3-15; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1523*)

910 IAC 3-3-16 Smoking

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 16. A covered entity may prohibit or impose restrictions on smoking in places of employment. Such restrictions do not violate any provision of this article. (*Civil Rights Commission; 910 IAC 3-3-16; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1524*)

910 IAC 3-3-17 Infectious and communicable diseases; food handling jobs

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 17. (a) Under Title I of the Americans with Disabilities Act, Section 103(d)(1), the Secretary of Health and Human Services is to prepare a list, to be updated annually, of infectious and communicable diseases that are transmitted through the handling of food. (Copies may be obtained from Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, NE, Mailstop C09, Atlanta, Georgia 30333.) If an individual with a disability is disabled by one (1) of the infectious or communicable diseases included on this list, and if the risk of transmitting the disease associated with the handling of food cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling. However, if the individual with a disability is a current employee, the employer must consider whether he or she can be accommodated by reassignment to a vacant position not involving food handling.

(b) This section does not preempt, modify, or amend any state, county, or local law, ordinance, or rule applicable to food handling that is:

(1) in accordance with the list referred to in subsection (a) of infectious or communicable diseases and the modes of transmissibility published by the Secretary of Health and Human Services; and

(2) designed to protect the public health from individuals who pose a significant risk to the health or safety of others, where that risk cannot be eliminated by reasonable accommodation.

(*Civil Rights Commission; 910 IAC 3-3-17; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1524*)

910 IAC 3-3-18 Health insurance; life insurance; other benefit plans

Authority: IC 22-9-5-27

Affected: IC 22-9-5

Sec. 18. (a) An insurer, hospital, or medical service company, health maintenance organization, or any agent or entity that administers benefit plans, or similar organizations may underwrite risks, classify risks, or administer such risks that are based on

or not inconsistent with state law.

(b) A covered entity may establish, sponsor, observe, or administer the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with state law.

(c) A covered entity may establish, sponsor, observe, or administer the terms of a bona fide benefit plan that is not subject to state laws that regulate insurance.

(d) The activities described in this subsection are permitted unless these activities are being used as a subterfuge to evade the purposes of this article. (*Civil Rights Commission; 910 IAC 3-3-18; filed Dec 31, 1998, 2:10 p.m.: 22 IR 1524*)

*