

DATE FILED

MAY 18 2020

ICRC  
COMMISSION

STATE OF INDIANA  
INDIANA CIVIL RIGHTS COMMISSION

TERESA GUTKNECHT,	)	ICRC NO.: 470-2018-03204
Complainant,	)	BEOC No.: 470-2018-03204
vs.	)	
AES,	)	
Respondent.	)	

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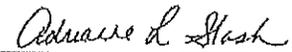
**FINAL ORDER**

On April 23, 2020 Hon. Caroline Stephens Ryker, Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") issued her Initial Findings of Fact, Conclusions of Law, and Order ("Order"). The parties had opportunity to object to the Order; neither party objected. With no objections or an intent to review on record, the Commission shall affirm the Order. IC 4-21.5-3-29. After consideration of the record in this matter and the Order, **THE COMMISSION HEREBY ORDERS:**

1. The findings of fact and conclusions of law as stated in the Order, a copy of which is attached hereto, are incorporated herein by reference. IC 4-21.5-3-28.
2. The Order is AFFIRMED under IC 4-21.5-3-29 and hereby becomes the Final Order disposing of the proceedings. IC 4-21.5-3-27(a).

Either party to a dispute filed under IC 22-9 may, not more than thirty (30) days after the date of receipt of the Commission's final appealable order, appeal to the court of appeals under the same terms, conditions, and standards that govern appeals in ordinary civil actions. IC 22-9-8-1.

SO ORDERED by the majority vote of 5 Commissioners on May 15, 2020.  
*Signed this May 15, 2020.*

  
\_\_\_\_\_  
Chair Adrienne Slush

Certificate of Service

Served this 18th day of May in 2020 by United States Mail on the following:

Teresa Nicole Gutknecht  
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with a courtesy copy provided to:

Frederick S. Bremer, Esq.; ICRC Staff Attorney  
[fbremer@icrc.in.gov](mailto:fbremer@icrc.in.gov)

A handwritten signature consisting of the letters 'JBL' in a cursive style, written over a solid horizontal line.



6. Complainant is no longer cooperating with ICRC Staff Attorney Bremer to litigate this matter.
7. Complainant has not filed a Motion to Withdraw.
8. On April 1, 2020, the ALJ issued a Proposed Default Order in which she proposed to dismiss this matter on the following grounds:
  - a. Complainant failed to participate in discovery, which is an important stage of this proceeding;
  - b. Complainant failed to plead or otherwise defend in this action;
  - c. Complainant failed to diligently prosecute her case before the Commission;
  - d. Complainant failed to communicate to her assigned ICRC Staff Attorney the information necessary to respond to Respondent's discovery requests; and
  - e. Complainant failed to participate in this matter and has failed to pursue her claim before the Commission.
9. The Proposed Default Order was served by certified mail on April 9, 2020 to Complainant.
10. In the Proposed Default Order, Complainant was notified of her opportunity to file a written motion under the Indiana Administrative Orders and Procedures Act. She was additionally advised that if a written motion was filed, the ALJ could either enter or refuse to enter a default order and that if no written motion was filed, the ALJ would enter a default order dismissing this matter.
11. Any Conclusion of Law that should have been deemed a Finding of Fact is hereby adopted as such.

#### **CONCLUSIONS OF LAW**

1. The ICRC has jurisdiction over Complainant's employment discrimination complaint and over the Parties, who are an employer and an employee. IC 22-9-1-2; IC 22-9-1-3(h); IC 22-9-1-3(i).
2. Unless specifically incorporated by the Indiana Administrative Code governing ICRC proceedings, the Indiana Trial Rules do not apply to ICRC's administrative proceedings. *Solar Sources, Inc. v. Air Pollution Control Bd.*, 409 N.E.2d 1136, 1138 (Ind. Ct. App. 1980). However, under the Indiana Administrative Orders and Procedures Act, a complaint may be dismissed when a Party has failed to "...attend or participate in a prehearing conference, hearing, or other stage of the proceeding..." IC 4-21.5-3-24(a).

3. Additionally, if a Complainant fails to meet his or her obligations to the Commission as described in the Indiana Administrative Code, then the Complainant's complaint may be dismissed. 910 IAC 1-16-1(b).
4. Importantly, "...default judgments clearly are disfavored in Indiana." *Comer-Marquardt v. A-1 Glassworks, LLC*, 806 N.E.2d 883, 886 (Ind. Ct. App. 2004). However, in this instance, default is appropriate.
5. Discovery is a vital stage in preparing for a hearing on the merits, and it is designed to be self-executing, with minimal oversight by the adjudicator. *Pitts v. Johnson Cty. Dep't of Pub. Welfare*, 491 N.E.2d 1013, 1014-1015 (Ind. Ct. App. 1986).
6. The Indiana Trial Rules on discovery apply in administrative proceedings before the Commission. 910 IAC 1-4-1.
7. Responses to requests for interrogatories are due within 30 days of receipt of the discovery requests. IND. TR. R. 33. Complainant has not responded to Respondent's discovery requests, and her answers are overdue.
8. In accordance with the Indiana Administrative Code, "[e]ach [C]omplainant has the duty to diligently prosecute his or her case before the commission..." 910 IAC 1-16-1. Specifically, Complainants must "...respond, in a timely manner, to any and all requests by members of the [C]ommission's staff that are reasonably necessary to the conduct of an investigation by the [C]ommission." *Id.*
9. Complainant did not collaborate and communicate with her assigned ICRC Staff Attorney to respond to Respondent's discovery requests. Although Complainant may obtain her own private counsel or proceed *pro se*, she has not responded to Respondent's discovery requests in any capacity. 910 IAC 1-8-1.
10. Complainant has not complied with the rules concerning discovery responses, and she has not met her obligations to the Commission as described in the Indiana Administrative Code. Her failure to respond to discovery requests deprives Respondent of the opportunity to fairly defend in this matter. On April 1, 2020, the undersigned ALJ entered a Proposed Default Order in which the ALJ granted Respondent's Motion under 910 IAC 1-16-1 and IC 4-21.5-3-24(a).
11. Any written motion opposing the entry of the Proposed Default Order was due on April 16, 2020, and Complainant did not file any such written motion by the deadline.

12. Accordingly, the undersigned ALJ is required to enter this default order; this matter is dismissed. IC 4-21.5-3-24(c); 910 IAC 1-16-1.
13. Dismissal of this matter is appropriate under 910 IAC 1-16-1.
14. Dismissal of this matter is appropriate under IC 4-21.5-3-24(a)(3).
15. Any Finding of Fact that should have been deemed a Conclusion of Law is hereby adopted as such.

### **ORDER**

1. Complainant's September 25, 2018 complaint is DISMISSED, with prejudice.
2. This order becomes a final order disposing of the proceedings immediately upon affirmation by the Commission. IC 4-21.5-3-29.

### **Default**

A Party who fails to attend or participate in a prehearing conference, hearing, or other later stage of the proceeding may be held in default or have a proceeding dismissed. IC 4-21.5-3-18(d)(8); IC 4-21.5-3-24.

### **Resolution of the Matter**

**Parties must notify the Presiding Officer of a settlement.** If a hearing has not been set, the filing of a written, Notice of Withdrawal by Complainant is immediately effective in closing the matter; however, if a joint motion to dismiss or request for withdrawal is made after the case has been set for hearing, the written consent of a majority of the Commissioners must be obtained. 910 IAC 1-2-6. **Notification of a settlement will not result in the closure of the complaint or the staying of deadlines unless accompanied by a written motion for dismissal, withdrawal, or staying of deadlines.**

### **Administrative Review**

Administrative review of this initial decision may be obtained by filing objections with the Commission that state with reasonable particularity each basis for each objection within 15 days after service of this initial decision. IC 4-21.5-3-29(d). Subject to Indiana Code 4-21.5-3-1, filings before the Commission and ICRC ALJ can be made with the Docket Clerk of the Indiana Civil Rights Commission by email, by fax, by personal service, or by mail at the following:

**Docket Clerk  
c/o Indiana Civil Rights Commission  
100 North Senate Avenue, N300  
Indianapolis, IN 46204**

Fax: 317-232-6580  
Email: [doctetclerk@icrc.in.gov](mailto:doctetclerk@icrc.in.gov)

A Party shall serve copies of any filed item on all Parties. IC 4-21.5-3-17(c).

**Contact Information**

The name, official title, and mailing address of the Presiding Officer and a telephone number through which information concerning schedules and procedures may be obtained, is included below. **However, all *ex parte* contacts –direct or indirect communications regarding any issue in the pending proceeding without notice and opportunity for all Parties to participate in the communication -- are forbidden by law.** Repeat: a Party shall serve copies of any filed item on **all Parties**. IC 4-21.5-3-17(c). The attached Certificate of Service includes the names and mailing addresses of all known Parties and other persons to whom notice is being given. IC 4-21.5-3-18(d)(1).

Dated this 23<sup>rd</sup> day of April, 2020



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Hon. Caroline A. Stephens Ryker  
Administrative Law Judge  
Indiana Civil Rights Commission  
100 North Senate Avenue, Room N300  
Indianapolis, IN 46204-2255  
*Micah Benson, Docket Clerk*  
[doctetclerk@icrc.in.gov](mailto:doctetclerk@icrc.in.gov)  
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Certificate of Service

Served this 23rd day of April in 2020 by United States Mail on the following:

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with a courtesy copy provided to:

Frederick S. Bremer, Esq.; ICRC Staff Attorney  
[fbremer@icrc.in.gov](mailto:fbremer@icrc.in.gov)



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