



RULES AND REGULATIONS  
OF  
THE SOUTH BEND HUMAN RIGHTS COMMISSION  
1981 REVISION, AMENDED 1993, 1996, AND 1998

The South Bend Human Rights Commission, on August 31, 1993, March 20, 1996, and January 21, 1998, amended the Official Rules and Regulations of the South Bend Human Rights Commission, the final amended version of which became effective January 22, 1998, and is contained herein.

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Rule I  
DEFINITIONS

Section 1.1 – Definitions

When used in these rules, unless the context clearly requires otherwise, the following terms shall have the meaning as indicated.

- (A) “Affirmative Action” shall mean those acts which the Commission deems necessary to assure compliance with the South Bend Human Rights Ordinance.
- (B) “Chairperson” means the individual selected by the Commission membership once each year to serve as chair pursuant to the Ordinance.
- (C) “Charge” shall mean any written grievance filed by a Charging Party with the Commission. The original shall be signed and verified before a notary public or other person duly authorized by law to administer oaths and take acknowledgments.
- (D) “Charging Party” shall mean any individual charging on his/her own behalf to have been personally aggrieved by a discriminatory practice or the Director of the Commission charging that a discriminatory practice was committed against a person other than himself/herself or a class of people in order to vindicate the public policy of the City of South Bend as defined in the South Bend Human Rights Ordinance (Chapter 2, Article IX of the Municipal Code of South Bend, Indiana)
- (E) “Commission” shall mean the South Bend Human Rights Commission.
- (F) “Commissioner” shall mean a duly appointed member of the Commission.
- (G) “Conciliation Conference” shall mean a meeting, between the Director, or a staff member appointed by the Director, and the Respondent, or an agent of the Respondent who is duly authorized by law or in writing to represent the Respondent, for the purpose of negotiating the provisions of a consent agreement.
- (H) “Consent Agreement” shall mean a formal agreement formulated by the Director, which is entered into in lieu of adjudication. The Consent Agreement shall be calculated to give justice to the Charging Party, and to vindicate the public policy of the City of South Bend as expressed in the South Bend Human Rights Ordinance.
- (I) “Day” shall mean a calendar day unless the context clearly requires otherwise. Provided, however, that when any period in which action must be taken under these rules expires on a Saturday, Sunday or a national or state holiday, such period will be extended to the next business day. Provided further that all periods of notice or time for taking action prescribed by these rules 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.
- (J) “Department of Law” shall mean the Department of Law of the City of South Bend.

(K) “Director” shall mean the chief administrative officer of the South Bend Human Rights Commission.

(L) “Discriminatory Practice” shall mean the exclusion of a person or persons by another person from equal opportunity, or a system which excludes persons from equal opportunity in employment, education, public conveniences, and accommodations because of race, religion, color, sex disability, national origin, or ancestry. A discriminatory practice also means the refusal to sell or rent after the making of a bona fide offer; the refusal to negotiate for the sale or rental or otherwise making unavailable or denying, or otherwise discriminating against any person in the terms, conditions, privileges of sale or rental of a dwelling, or in providing services or facilities in connection with the sale or rental of a dwelling because of a person’s race, color, religion, sex, familial status, disability, national origin.

A “discriminatory practice” shall also include the following:

1. Advertising for the sale or rental of a dwelling in a manner that indicates any preference, limitation, or discrimination because of race, color, religion, sex, disability, familial status, or national origin;
2. Falsely representing that a dwelling is not available for inspection, sale, or rental based on race, color, religion, sex, disability, familial status, or national origin;
3. Coercion, intimidation, threats, or interference with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by Sections 2-128.2, 2-128.2, 2-128.3, 2-128.4, or 2-128.5 of this Chapter;
4. Blockbusting based on representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, disability, familial status, or national origin;
5. Discrimination because of race, color, religion, sex, disability, national origin, or familial status by persons or entities whose business includes engaging in residential real estate transactions in the making of a loan or the granting of financial assistance for residential real estate in the selling, brokering, or appraisal of residential real estate, or by the denial of access to or participation in a multiple-listing service or other real estate broker organization or services.

Every discriminatory practice relating to the acquisition or sale of real property, education, public accommodations, or employment shall be considered unlawful unless it is specifically exempted by the South Bend Human Rights Ordinance.

(M) “Fact-finding Conference” shall mean a meeting between the parties called by the Director, prior to finding of probable cause or no probable cause, to define the issues, to determine

which elements are undisputed, to resolve those issues that can be resolved, and to ascertain whether there is a basis for negotiated settlement of the charge.

- (N) “Final Order” shall mean an order entered by the Commission after public hearing and after the public hearing officer has filed his/her Recommended Order.
- (O) “Disabled” or “Disability” means, with respect to a person:
  - (1) A physical or mental impairment that substantially limits one (1) or more of the person’s major life activities;
  - (2) A record of having an impairment described in subdivision (1); or
  - (3) Being regarded as having an impairment described in subdivision (1).

The term does not include current illegal use of or addiction to a controlled substance (as defined in Section 102 of the Controlled Substances Act (21U.S.C.§802). The term does not include an individual solely because the individual is a transvestite.

- (P) “Public Hearing Officer” shall mean the person appointed by the Chairperson to conduct a public hearing and to rule on all pre-hearing requests, motions, and petitions.
- (Q) “Majority of the Commission” shall mean a simple majority of the then current Commission membership, exclusive of any vacancies.
- (R) “Notice” shall mean either personal hand delivery or mailing by certified mail with return receipt requested. Notice shall include a concise statement of the question determined or to be determined, the date, place, and time of appearance where applicable, and a statement of the right of the party, where available, to appeal decisions adverse to him. Where a party is given notice of an event which is to take place in his case, notice shall be given at least ten (10) days prior to that event unless a longer or shorter period of time is specifically prescribed by these rules.
- (S) “Order by Default” shall mean an order issued by the Commission, after proper notice, against a Respondent who has failed to answer a charge or against a party who has failed to appear at a public hearing at which such party is required to appear by these rules. Upon the concurrence of a majority of the Commissioners, an Order by Default shall have the same scope and effect as a final order issued by the Commission subsequent to a public hearing.
- (T) “Ordinance” shall mean the South Bend Human Rights Ordinance, No. 6003-76, effective August 4, 1976, as amended by Ordinance No. 6635 (Chapter 2, Article IX of the Municipal Code of South Bend, Indiana).
- (U) “Parties” shall mean the Charging Party, the Respondent, an intervenor, and where appropriate, the Director of the South Bend Human Rights Commission.
- (V) “Person” includes the City of South Bend, one or more individuals, partnerships, associations, organizations, corporations, trustees in bankruptcy, receivers and other

organized groups of persons, by shall exclude those employers excluded by the provisions of Section 2-128(e) of the South Bend Human Rights Ordinance.

- (W) “Probable Cause” shall mean that there exists reasonable grounds supported by facts and circumstances strong enough themselves to warrant a cautious person in the belief that discriminatory practices have taken place against the Charging Party in violation of the South Bend Human Rights Ordinance.
- (X) “Quorum” shall mean any five (5) members of the Commission membership.
- (Y) “Representative of the Department of Law” shall mean the City Attorney of South Bend, or such assistants to the City Attorney as may be assigned to the Commission.
- (Z) “Respondent” shall mean one or more persons against whom a charge has been filed.
- (AA) “Staff” shall mean those individuals employed by the South Bend Human Rights Commission who work under the supervision and control of the Director.



RULE II  
GENERAL INFORMATION

Section 2.1 – Authority

(A) Enabling Act

Sec. 22-9-1-12.1, Indiana Code of 1971, authorizes the establishment of local civil rights commissions by city ordinance.

(B) Authority from the Municipal Code

The South Bend Human Rights Ordinance, No. 6003-76, effective August 4, 1976, as amended by Ordinance No. 6635-79, establishes the Human Rights Commission. That law prohibits the denial of equal opportunity to individuals because of their race, religion, color, sex, gender identification, sexual orientation, disability, national origin, or ancestry in the areas of education, employment, public accommodations, and acquisition of real property through purchase or rental. The Commission is empowered by that law to receive and investigate charges of discriminatory practices in these areas.

(C) Authority from the Equal Employment Opportunity Commission

The South Bend Human Rights Commission, under the currently effective contract with the Equal Employment Opportunity Commission, September 20, 1976, has undertaken to receive and investigate charges deferred/referred by the Equal Employment Opportunity Commission which are within the jurisdiction of the South Bend Human Rights Commission.

Section 2.2 – Scope of Coverage

(A) Application

These rules govern procedures in administrative adjudicatory proceedings conducted before the South Bend Human Rights Commission. Administrative adjudication means the administrative investigation, hearing, and determination by an agency of issues or cases applicable to particular persons. Such proceedings are adversary, wherein the rights of more than one party are to be adjudicated by the Commission. These rules are not applicable to a Commission proceeding which is not an adjudication proceeding.

Section 2.3 – Adoption and Amendment

(A) Authority

Section 2-131(c) of the Ordinance authorizes the Commission to adopt, promulgate, amend, and rescind such rules and regulations, procedural, and substantive, as may be consistent with provisions of the Ordinance and state laws.

(B) When Effective

These rules shall be adopted by a majority of the Commission at a public meeting in order to become effective. Amendments to these rules must be adopted by a majority of the Commission at a public meeting. After adoption these rules and amendments thereto become effective. Copies shall be available to the public at the Commission's office in reasonable quantity.

Section 2.4 – Voluntary Disqualification

(A) How to Disqualify

If at any time during the processing of a charge, a Commissioner is called upon to participate in a decision involving the rights of the respective parties, and such Commissioner has a direct or indirect interest in the final outcome of such case, the Commissioner shall disqualify himself/herself from any participation in that case.

Section 2.5 – Incapacity of the Chairperson

(A) Assumption of Duties by Vice-Chairperson

In the event of the incapacity of the Chairperson to fulfill his/her duties under these rules, the Vice-Chairperson shall assume such duties for the duration of the incapacity. In the event of the incapacity of the Vice-Chairperson to fulfill his/her duties under these rules, the Commission shall designate a Commissioner who shall assume such duties for the duration of the incapacity of the Vice-Chairperson and the Chairperson.

RULE III

FILING AND PROCESSING A CHARGE

Section 3.1 – Filing Charge with Commission

(A) Who May File

Any person claiming to be aggrieved by a discriminatory practice or any other act contrary to the provisions of the Ordinance may file a charge with the Commission in accordance with the rules hereinafter stated.

(B) Director Initiated Charges

The Director may initiate a charge in order to vindicate the public policy of the City of South Bend as expressed in the Ordinance. The Director may file such a charge only after pursuing a preliminary investigation, and concluding that there is reason to believe that an act of unlawful discrimination has been committed against a person or against a class of people.

(C) Expansion of an Individual Charge

Where a charge is filed in accordance with these rules and the Director determines that relief for more than the individual Charging Party is appropriate, the Director may seek amendment of the charge by motion to the Chairperson, or the Director may file a separate charge with respect to the acts of discrimination against such other individuals. Such separate charge may be consolidated with the original or amended charge of the Charging Party for the purposes of all subsequent proceedings or may be docketed separately at the discretion of the Director.

Section 3.2 – Manner of Filing

(A) Where to File

Charges shall be filed with the Commission at its office, 319 N. Niles Avenue, Suite 150A, South Bend, Indiana, 46617, either personally or by mail.

(B) What Constitutes Filing

The charge shall be deemed filed as of the date of:

- (i) The postmark, if the charge is filed by mail, or its receipt at the Commission's office if no postmark is visible;
- (ii) Receipt at the Commission's office if the charge is filed by personal delivery;
- (iii) Oral presentation in the Commission's office to a Staff member who receives the information and prepares a written charge.

(C) Time Limit on Filing

A charge must be filed within ninety (90) days from the date of the occurrence of the alleged discriminatory practice or on the date of the termination of a published and meaningful grievance procedures provided by a Respondent employer, or labor union, except that a charge based upon a discriminatory practice in housing or housing-related transaction must be filed within one hundred eighty (180) days from the date of the alleged act. If the alleged discriminatory practice is of a continuing nature, the date of the occurrence of said practice shall be deemed to be any date subsequent to the commencement of the unlawful employment practice or unlawful discriminatory practice up to and including the date upon which it shall have ceased.

(D) Docketing of Charge

Each charge shall be given a case number and the date of receipt of the charge shall be indicated on the charge.

(E) Acknowledgement to Charging Party in Housing Cases

In every case where a Charging Party alleges a discriminatory housing practice or housing-related practice prohibited by the South Bend Human Rights Ordinance, the Director shall serve notice in writing to Charging Party acknowledging that the charge has been duly filed with the Commission and such notice shall also inform Charging Party of the time limits and choice of forums provided under the law in such housing cases.

Section 3.3 – Charges Filed with Other Agencies, State & National

- (A) A charge filed with the Equal Employment Opportunity Commission shall be deemed filed with the South Bend Human Rights Commission on the date it was received by the Equal Employment Opportunity Commission, provided that the charge conforms to the requirements of the South Bend Human Rights Ordinance.
- (B) If any person files a charge with the South Bend Human Rights Commission he/she shall have no recourse to the Indiana Civil Rights Commission concerning any of the matters alleged in such charge, and any person who files a charge with the Indiana Civil Rights Commission shall have no recourse with the South Bend Human Rights Commission concerning any of the matters alleged in such charge, however, nothing shall affect such person's right to pursue any and all rights and remedies available in any other state or federal forum.

Section 3.4 – Necessary Content, Form of the Charge

(A) Content of the Charge

To be processed by the Commission, the charge shall be in writing and sufficiently complete so as to reflect properly:

- (i) The full name and address of the Charging Party.
- (ii) The full name and address of the Respondent against whom the charge has been filed.
- (iii) The alleged discriminatory practice and if such discriminatory practice is alleged to be of a continuing nature, the dates within which such continuing acts as alleged to have occurred.
- (iv) The fact, if true, that any other action of a civil or criminal nature has been instituted based upon the grievance indicated in the charge and the status or disposition of any other such action.

Any charge which is deemed insufficient under the provisions of this section shall be docketed pursuant to the provision of Section 3.2(D) and the Charging Party afforded a reasonable time upon notice, not to exceed 15 days, in which to perfect the charge. When docketed the ninety day limit for filing a charge under Section 3.2(C) shall be tolled.

(B) Form of the Charge

To be processed by the Commission, the charge must be on a form provided by the Commission and signed and verified before a notary public or other person duly authorized by law to administer oaths and to take acknowledgments. Notarial service shall be furnished without charge by the Commission.

(C) Staff Assistance

The Commission's Staff shall provide assistance in drafting and filing charges.

Section 3.5 – Withdrawal of a Charge

(A) Who May Withdraw

A charge, or any part thereof, may be withdrawn only upon written request as herein set forth:

- (i) If the request for withdrawal is made before a probable cause hearing has been held, and notice thereof sent, the charge may be withdrawn at the discretion of the Charging Party. The Director shall notify the Commission of the withdrawal at its next regular meeting to affect formal closure of the charge.
- (ii) If the request for withdrawal is made after a probable cause hearing has been held, the written consent of a majority of the Commissioners shall be obtained to affect formal withdrawal and closure of the charge.

(B) Notice of Withdrawal

All parties to the charge shall be notified of the withdrawal by proper notice.

Section 3.6 – Administrative Closure

Prior to hearing, any charge may be administratively closed upon the vote of a majority of the Commission upon any of the following grounds:

- (A) Where a charge on its face discloses that it was not timely filed.
- (B) Where a charge on its face discloses that it is not within the jurisdiction of the Commission.
- (C) Where the Director and Staff have been unable to locate the Charging Party after diligent effort to do so.
- (D) Where a Charging Party, after warning by the Director or Staff of the consequences of his/her acts, refuses to cooperate with the investigation of his/her charge by providing the Director and Staff with information relating thereto within his/her possession within ten (10) days after such information is requested.

- (E) Where, upon warning by the Director or Staff, the Charging Party misses mutually agreed upon appointment times without adequate cause or declines to meet with the Director or Staff to prepare his/her case for hearing.
- (F) Where a Charging Party has refused to accept a settlement offer made by the Respondent, which is approved the Director, and which settlement constitutes the maximum award which could be made under law by the Commission.

Notice of administrative closure shall be served on all parties to the charge at each party's last known address by certified mail, return receipt requested. Such notice shall advise the Charging party that he/she may appeal the decision of the Commission. Any Charging Party may apply in writing to the Commission for the reopening of any case closed pursuant to this section. Such application shall be made within fifteen (15) days after notice of closure has been given and upon notice to all parties of the charge. Reopening shall be granted only in extraordinary circumstances where the Commission with regard to an application for reopening in any case closed pursuant to this rule shall be in writing, shall include an appropriate order and shall be served upon all parties by registered or certified mail, return receipt requested.

### Section 3.7 – The Answer

(A) Notice to Respondent

Upon receiving and accepting a charge, the Commission shall promptly notify the appropriate party by proper notice that such party has been named a Respondent in a charge submitted to the Commission. A copy of the verified charge will be provided to the Respondent with such notice.

(B) Filing an Answer

The Respondent shall itself, or by its duly authorized representative, answer the charge. The answer shall be in writing, and signed by the Respondent or its duly authorized representative. The answer shall be filed within twenty (20) days after service of the charge upon the Respondent.

(C) Immediate Relief

Respondent may choose not to file an answer and in the alternative, choose to grant immediate relief to the Charging Party within five (5) days after service upon Respondent of a copy of the charge. If Charging Party accepts the offer of relief, the charge shall be dismissed subject to full performance by the Respondent of the proposed offer.

(D) Failure to File an Answer

If Respondent fails to file answer to the charge within twenty (20) days after service of the charge upon Respondent, the Commission will deem this failure to answer

to be an admission to the truth of the charge, and it shall proceed pursuant to Rule XVIII for an Order by Default.

(E) New Matter

Any new allegation raised in the answer shall be deemed denied without the necessity of reply from the Charging Party.

(F) Extension of Time

Upon timely written request and a showing of good cause, the Director of the Commission may extend the time within which the answer may be filed if the rights of the Charging Party will not be prejudiced as a consequence, provided that no such Director authorized extension will be granted more than once in a case. Should the Respondent desire an additional extension Respondent may apply to the Chairperson of the Commission to gain such an additional extension. The Chairperson may grant one such an additional extension if the Chairperson determines that the rights of the Charging Party will not be prejudiced as a consequence, and if good cause is shown for granting an extension.

Section 3.8 – Amendments to the Charge and Answer

(A) Amendment to the Charge

At any time prior to the issuance of the notice of public hearing a charge may be amended as a matter of right by the Charging Party in order to clarify the allegations, to correct errors, or to include additional allegations of discrimination. After the issuance of a notice of public hearing, the Public Hearing Officer appointed for the case may permit the charge to be amended as justice requires.

(B) Amendment to the Answer

The Respondent may amend his/her answer as a matter of right at any time up to ten (10) days prior to the date scheduled for the public hearing and, thereafter, as justice requires, upon written request and a showing of good cause.

(C) Notice of Amendments

The parties shall be given proper notice of all amendments.

(D) Issues Not in the Pleadings

When issues not raised in the charge as amended or answered 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; by failure to so amend shall not affect the adjudication of the hearing of these issues. If evidence is objected to at the hearing on the ground that it is not within the issues raised by

the pleadings, the Public Hearing 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 him/her in maintaining his/her defense on the merits. The Public Hearing Officer may grant a continuance to enable the objecting party to meet such evidence.

### Section 3.9 – Motion for a More Definite Statement

(A) Definition

Any person named as a Respondent by the charge may file a motion in writing within ten (10) days after service thereof requesting the allegations in the charge be made more definite and certain. Such motion shall point out the deficiencies complained of and details desired. The Chairperson or in his/her absence the Vice-Chairperson of the Commission shall rule on the motion, and if the motion is granted, shall fix the time within the Charging Party shall comply.

(B) The Degree of Specificity Required

The motion to make more specific shall be utilized only to clarify the issues sufficiently to enable the moving party to prepare such party's defense to the allegations raised in the charge.

### Section 3.10 – Time Limitations on Processing Housing Charges

For any charge or part of a charge alleging a discriminatory housing practice or housing related practice prohibited by the South Bend Human Rights Ordinance, the following proceeding limitation periods shall apply:

(A) Commencement of Proceedings

The Director shall commence proceedings with respect to such charge or part of a charge before the end of the thirtieth (30) day after the receipt of the charge.

(B) Completion of Investigation

The Director shall investigate allegations of the charge and complete the investigation in no more than one hundred (100) days after receipt of the charge unless completion within that time limit is impracticable. If the Commission is unable to complete its investigation within one hundred (100) days, the Director shall notify Charging Party and Respondent in writing of the Commission's reasons for not doing so.



RULE VI  
SERVICE OF PROCESS

Section 4.1 – Manner of Filing

(A) Charges, Answers, Amendments Thereto

The charge, the answer, and amendments to either charge or to the answer shall be filed with the Commission as provided by Rule III.

(B) Motion, Petitions, Etc.

Motions, petitions, requests, and other pleadings shall be filed either by personal delivery to the Commission office during regular business hours or by mailing the original thereof to the Commission office. All such instruments shall be signed by the party on whose behalf they are filed, or such party's attorney and shall show the party's address and phone number, or the address and phone number of the party's attorney.

(C) Notices and Orders

Any notice or order provided for in these rules shall be served as subpoenas are served under the terms of Section 5.1(D). Any notice which is required to be given or may be given to a party represented in the proceedings by an attorney before the Commission shall be served on the party's attorney with a copy of such notice of order sent to the party represented by such attorney.

Section 4.2 – Motions; Form

After the initial filing of the charge, applications to the Commission to take any action or to enter any order shall be by motion. Motions must be made in writing, unless made during a hearing. Motions submitted to the Commission shall state specifically the grounds therefor and shall set forth the action or orders sought.

Section 4.3 – Notices; Form and Period

In all cases in which the Commission is the moving party, all notices provided for herein shall be in writing, and shall be given at least ten (10) days prior to the event of which notice is given, unless a longer period of notice is prescribed in these rules. Every notice shall set forth therein 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.

Section 4.4 – Rulings on Motions

After a Public Hearing Officer has been appointed, he shall rule on all motions concerning the case to which he has been assigned, with the exception of motions to quash or to modify

subpoenas. Motions, or any other petitions which come to the Commission prior to the appointment of a Public Hearing Officer, shall be ruled on by the Chairperson or in the Chairperson's absence by the Vice-Chairperson. All rulings and motions shall be final, except for a ruling which grants a motion to dismiss. Where a motion to dismiss is granted it shall require the concurrence of a majority of the membership.

RULE V  
SUBPOENAS

Section 5.1 – Issuance

(A) Power to Subpoena

The Commission shall have the power to subpoena. This power includes the authority to compel the attendance of witnesses, and to require the production for examination of any books and papers relating to any matter under investigation or in question before the Commission.

(B) Procedure for Issuance

The Chairperson may issue subpoenas upon the Director's application after the Chairperson consults with a representative of the Department of Law. The Chairperson shall issue the subpoena if he/she determines that the materials or witnesses sought are relevant to the Staff's investigation, that the subpoena is not reasonable or oppressive to the person who would be served, and that the Commission has jurisdiction in the matter.

(C) Public Hearing Officer Subpoena

Upon the appointment of a Public Hearing Officer to conduct a public hearing pursuant to the rules such Public Hearing Officer shall have the same power to issue subpoenas as the Commission.

(D) Form of Subpoena

A subpoena issued by the Commission shall be signed by the Chairperson. It shall state the full name of the Commission, the title of the case with which the subpoena is concerned, and in all other respects shall conform to the format used for subpoenas in the St. Joseph superior and circuit courts.

(E) Service of Subpoenas

A subpoena issued by the Commission may be served by any person. Service shall be made by delivering a copy of the subpoena to the person named therein. Delivery may be made by:

- (i) Sending a copy of the subpoena by registered or certified mail with a return receipt requested;

- (ii) Delivering a copy of the subpoena personally to the person named therein;
- (iii) Delivering a copy of the subpoena to the dwelling house of the person named therein and posting it in a conspicuous place thereon;
- (iv) Serving the agent of the person named therein.

Whenever service is made under subsection (iii) or (iv), a copy of the subpoena shall also be sent by first class mail to the last known address of the person named in the subpoena.

(F) Proof of Service

When a subpoena is served personally by the sheriff or deputy such return shall be proof of service. When a subpoena is served personally by any other person, the service must be shown by affidavit.

Section 5.2 – Types of Subpoenas

(A) For Production of Documentary Evidence

A subpoena may command a person to produce books, papers, documents, or other tangible things. The items sought to be produced shall be described with a degree of specificity sufficient to enable the party to understand that which is being sought.

(B) For Attendance and Giving of Testimony

The subpoena may command the person to whom it is directed to attend and give testimony at a time and place therein specified.

Section 5.3 – Quashing or Modifying Subpoena

(A) Motion to Quash or to Modify

A person who receives a subpoena may ask the Chairperson or Public Hearing Officer, by way of motion, to quash or modify the subpoena. Such a motion shall be filed in the manner and form outlined in Rule IV, and shall indicate the grounds for the request.

(B) Decision of the Chairperson

After consulting with a representative of the Department of Law, the Chairperson or Public Hearing Officer shall do one of the following:

- (i) Quash or modify the subpoena, if he/she determines that the materials or witnesses sought are not relevant to the Staff's investigation, or that the Commission has no jurisdiction in the matter;
- (ii) Deny the motion, if he/she determines that the grounds of the motion do not support an order to quash or to modify.

#### Section 5.4 – Failure to Obey a Subpoena

(A) Contempt

A person who refuses to obey a subpoena issued pursuant to this section may be held in contempt upon proper application to a circuit or superior court with jurisdiction.

(B) Dismissal or Default

If a person who without good cause fails or refuses to comply with a subpoena is a party or an agent or representative or a party, the Commission in the case of a Charging Party may dismiss the charge, or in the case of a Respondent, the Commission may enter a finding against the Respondent as to liability and/or bar the Respondent from introducing any document or thing that was the subject of the subpoena at any further stage of the Commission’s adjudicative process, including without limitation, at public hearing.

#### Section 5.5 – Confidentiality

- (A) Nothing in these rules shall be construed as making public or requiring the production of records or information which is made confidential by law.

### RULES VI

### DISCOVERY

#### Section 6.1 – Prior to the Setting of a Public Hearing

Prior to the setting of a public hearing, the Commission shall be entitled to all discovery provisions of Rules 26 through 37 of the Indiana Rules of Trial Procedure as a necessary aid to its investigatory function. The Chairperson, or in his/her absence the Vice-Chairperson, shall issue all protective or enforcement order of the Chairperson, or Vice-Chairperson, the Commission may seek a decree of court for enforcement of such order, or the Commission may otherwise penalize a party as provided in Rule V, Section 5.4.

#### Section 6.2 – After the Setting of a Public Hearing

Whenever a public hearing before the Commission is set as provided by these rules, the parties shall be entitled to all discovery provisions of Rules 26 through 37 of the Indiana Rules of Trial Procedure except where this would be inconsistent with a previously determined discovery bar pursuant to the Commission’s authority under Section 5.4(B). If a party or witness does not comply with the protective or enforcement order of the Public Hearing Officer, the Commission may seek a decree of court for the enforcement of such order, or the Commission may otherwise penalize a party as provided in Rule V, Section 5.4.

RULE VII  
PARTIES

Section 7.1 – Substitution

(A) Relation Back

Whenever the claim or defense asserted in an 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 party 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 him/her, the party to be brought in by amendment:

- (1) Has received such notice of the institution of the action that he/she will not be prejudiced in maintaining his/her 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/her.

Section 7.2 – Intervention

(A) Who May Intervene

Any person not initially joined in the action or proceeding shall be permitted to petition for intervention upon the filing of a motion which sets forth the grounds for said intervention. A petition to intervene may be granted or denied as justice may require.

Section 7.3 – Joinder of Persons Needed for a Just Adjudication

(A) Persons to be Joined if Feasible

A person subject to service of process shall be joined as a party before the Commission if:

- (i) In his/her absence complete relief cannot be accorded among those already parties; or
- (ii) He/she claims an interest relating to the subject of the action and is so situated that the disposition of the action in his/her absence may:
  - (a) As a practical matter impair or impede his/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 his/her claimed interest.

If a person has not been so joined, the Commission shall order such person to be made a party.

(B) Whenever Joinder is Not Feasible

Notwithstanding subdivision (A) of this section when a person described in subsection (i) and (ii) is not made a party, the Public Hearing Officer may treat the absent party as not indispensable and allow the action to proceed without such party or the Public Hearing Officer may treat such absent party as indispensable and dismiss the action if such party is not subject to process. In determining whether or not a party is indispensable the Public Hearing Officer shall consider the following factors:

- (i) The extent to which a judgment rendered in the person's absence might be prejudicial to such party or those already parties;
- (ii) The extent of which, by protective provisions in the final order, by the shaping of relief or by other measures the prejudice can be lessened or avoided;
- (iii) Whether a final order rendered in the person's absence will be adequate;
- (iv) Whether the charging will have an adequate remedy if the complaint is dismissed for non-joinder.

RULE VIII

PRACTICE BEFORE THE COMMISSION

Section 8.1 – Appearance Before the Commission

(A) Who May Appear for a Party

Any party may appear before the Commission in their 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.

Section 8.2 – Venue

(A) Preservation of Centralized Neutral Forum

It is the policy of the Commission to maintain an objective neutral forum equally accessible to all participants in the proceedings before the Commission. In order to preserve this policy, hearings shall be held at the South Bend Human Rights Commission office in South Bend, Indiana, unless otherwise ordered by the Commission.

RULE IX  
PROCESSING A CHARGE

Section 9.1 – Pre-Investigation

(A) Docketing a Charge

Each charge shall be given a case number reflecting the order of the date of filing with the Commission and the type of discrimination alleged.

(B) Mailing of Notice

The Respondent shall be sent by registered or certified mail, return receipt requested, a copy of the verified charge, and interrogatories, if applicable, and a statement of Respondent's options under Section 3.7.

(C) Selection of Investigator

The Director may conduct the investigation of the charge or assign all or any part thereof to a member of the Staff.

Section 9.2 – Investigation Prior to a Finding of Probable Cause

If the Respondent chooses to defend against the charge, pursuant to Section 3.7(B), the Director shall initiate a full investigation of the charge. Based on the results of the investigation, the Director shall recommend whether the probable cause exists to believe that an illegal act of discrimination occurred in violation of the Ordinance.

Section 9.3 – Fact-Finding Conference

The Director may require a fact-finding conference with the parties prior to a recommendation on a charge of discrimination. The conference is primarily an investigative forum intended to define the issues, to determine which elements are undisputed, to resolve those issues that can be resolved and to ascertain whether there is a basis for negotiated settlement of the charge.

Section 9.4 – Probable Cause Recommendation

Subsequent to the completion of the preliminary investigation, the Director will formulate a recommendation as to whether there exists probable cause or no probable cause to believe that an act of discrimination did occur in violation of the Ordinance. Such a recommendation will be developed only after the receipt of an answer from the Respondent, or at the expiration of the twenty (20) day period immediately following the charge, whichever is sooner.

Section 9.5 – Review of the Director's Recommendation

The Director shall present his/her recommendation concerning probable cause to the full Commission at a regularly scheduled public meeting. Upon the vote of a majority of the

Commission membership excluding members abstaining, the Commission shall make its finding as prescribed by Section 9.6.

## Section 9.6 – Findings

### (A) Finding of Probable Cause

If, after reviewing the presentation of the Director, a majority of the Commissioners who are reviewing the case excluding abstaining members, agree on a finding of probable cause, the case shall be referred back to the Director. The Director shall thereupon continue his/her investigation, and begin conciliation efforts pursuant to Rule X. The Charging Party and the Respondent shall be notified of the finding of probable cause.

### (B) Finding of No Probable Cause

If, after hearing the presentation of the Director, a majority of the Commissioners reviewing the case excluding abstaining members, decide in favor of a finding of no probable cause, the Charging Party and Respondent shall be informed by proper notice of that decision. The right of the Charging Party to file a request for reconsideration of the finding pursuant to Section 9.6(C) shall be indicated in the notice. If the Charging Party fails to file a request for reconsideration within ten (10) days of receiving the notice, a final order of no probable cause shall be entered upon adoption of the findings of no probable cause by the Commission.

### (C) Reconsideration of No Probable Cause Finding

- (i) If the Charging Party believes himself/herself to be aggrieved by a finding of no probable cause, he/she may file a written request for reconsideration with the Commission. Such a request must be filed within ten (10) days of his/her receipt by proper notice of the no probable cause finding. Such request shall be filed in accordance with the procedure for filing set out in Section 3.2(A).
- (ii) Upon receiving a written request for reconsideration, the Chairperson shall appoint a Commissioner to review and rule on the request; the Commissioner so appointed will be called the Hearing Officer.
- (iii) The Hearing Officer shall schedule a meeting to be attended by the Charging Party, a representative of the Department of Law, and the Hearing Officer. A member of the Staff of the Commission may also attend.
- (iv) The Hearing Officer shall base his/her decision on the results of the Director's preliminary investigation, and upon the Charging Party's arguments presented at the meeting. The Hearing Officer shall not advise the Commission to reconsider its finding of no probable cause unless new information is presented at the meeting which when taken together with the



results of the preliminary investigation, persuades the Hearing Officer that the Commission's original decision should be reconsidered.

- (a) If the Hearing Officer determines that the finding of no probable cause should be reconsidered based upon new information, the charge shall be processed as though an original finding of probable cause has been made upon the adoption of the Hearing Officer's recommendation for reconsideration by a majority of the Commission. The Respondent shall receive proper notice of this determination.
- (b) If the Hearing Officer determines that the finding of no probable cause should be upheld, the charge shall be dismissed upon adoption of such recommendation by a majority of the Commission, excluding the Hearing Officer who shall not participate. The Charging Party and the Respondent shall be informed by proper notice of the Commission's ruling.
- (c) In the event the Hearing Officer determines that there was information which was not presented to the Commission at the time the no probable cause finding was made, but that the new information requires clarification or additions before a resubmission should be made, recommendation for reconsideration, the Hearing Officer, may remand the charge to the Director and direct him/her to secure such additional information through the use of a Staff investigator. After such information has been secured, the Director shall then forward the requested information to the Hearing Officer for his/her use.
- (v) No Hearing Officer who reviews and rules on a request for reconsideration of a no probable cause finding pursuant to this Section 9.6 may participate further in the processing of the charge.

## RULE X

### CONCILIATION PROCESS

#### Section 10.1 – Investigation After a Finding of Probable Cause

##### (A) Investigation of Allegations

Subsequent to the finding of probable cause, the Director of the Commission shall continue processing the charge.

## Section 10.2 – Conciliation

### (A) Statement of Policy

It is in the interests of all the parties involved in a dispute pursuant to the Ordinance to settle a controversy between Charging Party and Respondent without the necessity of a public hearing. The Director of the Commission is therefore authorized to conduct conciliation between parties at any time upon request of any party, and is authorized to promote a pre-public hearing conciliation between parties upon a finding of probable cause.

### (B) Director – Formulated Consent Agreement

Upon completing its investigation, the Director shall formulate a consent agreement which is calculated to give justice to the Charging Party and to vindicate the public policy of the City as reflected in the Ordinance. This consent agreement shall be sent by proper notice to the Respondent and to the Charging Party. Proper notice shall include:

- (i) Notice that the parties may sign the consent agreement and thus terminate the proceeding subject to the full performance of the Respondent's portion of the understanding.
- (ii) Notice of the Respondent's right to request in writing within seven (7) days of receipt of the consent agreement a conciliation conference for the purpose of negotiating differences concerning the consent agreement;
- (iii) Notice of the Respondent's option to ignore the Director's efforts at conciliation.

### (C) Setting Time and Date

When the Commission has received notice that the Respondent has requested a conciliation conference, the Director shall set a date, time, and place for the conference to take place which is convenient to the parties.

### (D) Who Shall Attend

The conciliation conference shall be attended by the Respondent or Respondent's agent, and the Director or a member of the Staff. The Charging Party shall be notified of the time and place of the conciliation conference and he/she may attend.

### (E) Conduct of Conciliation Conference

At the conciliation conference, the Director, or in the Director's absence a Staff member shall attempt to negotiate all differences regarding the provisions of the consent agreement. All discussions which take place at the conciliation conference are confidential. No declarations or statements made during the course of the conference or in furtherance of conciliation may be used either for or against a party

at a public hearing or at any subsequent legal proceeding concerning the matter, unless waived by the written consent of the Charging Party and the Respondent.

### Section 10.3 – Consent Agreement

(A) Successful Conciliation and Publication of Consent Agreement in Housing Cases

If the terms of a consent agreement are approved by all parties involved, as indicated by the signatures of the Charging Party and Respondent thereon, the agreement shall become effective upon the approval of the Commission. The Commission shall approve the agreement following its signature by the parties, and such approval shall be evidenced by the signing of the agreement by a majority of the Commissioners. In housing cases a consent agreement shall be made public unless Charging Party and Respondent agree otherwise and the Commission determines that disclosure is not necessary to further the purposes of the South Bend Human Rights Ordinance.

(B) Commission Supervision

After a consent agreement has gone into effect, the Commission shall retain supervisory authority over it for the purposes of insuring that the provisions of the agreement are complied with. If the Commission determines that the agreement is not being complied with, it may seek a decree of enforcement from the superior or circuit court of St. Joseph County.

(C) Unsuccessful Conciliation

A public hearing shall be held on the charge if:

- (i) The Respondent or the Charging Party cannot agree to the terms of the consent agreement as formulated by the Director or as negotiated or;
- (ii) The Respondent does not request, within seven (7) days of receipt of the Director-formulated consent agreement, that a conciliation conference take place.

## RULE XI

### NOTICE OF HEARING

#### Section 11.1 – Notice

(A) When Required

If, pursuant to these rules, a hearing is required, the hearing date shall be set by the Hearing Officer and the Hearing Officer shall cause notice thereof to be served upon all parties, except that notice of hearing on reconsideration of no probable cause shall be served only on the Charging Party or Charging Party's counsel.

(B) Contents of Notice

All notices of hearing shall state the date, time, and place of the hearing, and that the parties may appear with or without counsel at the hearing. All such notices shall advise the party that his/her failure to appear will result in an adverse Order by Default against him/her.

(C) Time

Notice of Hearing shall be delivered or mailed no less than fifteen (15) days prior to the date upon which the hearing is to be held.

(D) Extension of Time

Upon application, the Chairperson, or Hearing Officer if one has been appointed, may extend the date on which the hearing has been set for good cause shown.

RULE XII

HEARINGS

Section 12.1 – Pre-Public Hearing Conference

(A) Simplification and Stipulation

In any case before the Commission, the Public Hearing Officer may direct the parties and/or their attorneys or representatives to appear before him/her for a pre-hearing conference to consider:

- (i) The simplification of the issues;
- (ii) The necessity or desirability of amendments to the pleadings;
- (iii) The possibility of obtaining admissions of fact or documents to avoid unnecessary proof;
- (iv) A limitation on the number of expert witnesses;
- (v) An exchange of the names of witnesses to be called during the hearing, and an indication of the general nature of their expected testimony;
- (vi) Such other matters as may aid in the disposition of the action.

(B) When Called – Notice

Unless otherwise ordered by the Commission, the pre-public hearing conference shall not be called until after attempts at conciliation pursuant to these rules have failed.

(C) Participants

At least one attorney planning to take part in the hearing shall appear for each of the parties and participate in the pre-public hearing conference. However, when a Respondent or Charging Party chooses to represent himself/herself before the

Commission at a final hearing, such a party may appear at the pre-public hearing conference without counsel.

(D) Conference of Attorneys

Unless otherwise ordered by the Public Hearing Officer, attorneys for each of the parties shall meet and confer at least three (3) days prior to the pre-public hearing conference, and for the following purposes:

- (i) The attorney for each party shall mark for identification and provide opposing counsel an opportunity to inspect and copy all exhibits which he/she expects to introduce at the public hearing. Numbers or marks placed on such exhibits shall be pre-fixed with the symbol “P/H/C”, denoting its pre-public hearing conference designation. When the exhibit is introduced at public hearing the pre-public hearing conference designation will be stricken. The exhibits must also indicate the party identifying same. Exhibits of such nature as to prohibit or make impracticable their production at conference shall be identified and notice given regarding their intended use. Necessary arrangements must be made to afford opposing counsel an opportunity to examine such exhibits.
- (ii) Written stipulations shall be prepared with reference to all exhibits changed or identified. The stipulation shall contain all agreements of the parties with reference to the exchanged and identified exhibits, and shall include, but not be limited to, the agreement of the parties with reference to the authenticity of the exhibits, their admissibility in evidence, their use in opening statements, and provision made for the inspection of identified exhibits. The original of the exhibit stipulations shall be presented to the Public Hearing Officer at the pre-public hearing conference.
- (iii) The attorneys 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 Public Hearing Officer at the time of the pre-public hearing conference.
- (iv) 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 Public Hearing Officer at the time of the pre-public hearing conference.
- (v) The possibility of a compromise settlement shall be fully discussed and explored.

(E) Preparation For Conference of Attorneys

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

(F) Witnesses or Exhibits Discovered Subsequent to Conference of Attorneys and Before a Pre-Public Hearing Conference

If, after the conference of attorneys and before the pre-public hearing 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 Public Hearing Officer at the pre-public hearing conference.

(G) Witnesses or Exhibits Discovered Subsequent to Pre-Public Hearing Conference

If, following the pre-public hearing conference or during hearing, counsel discovers additional exhibits or the names of additional witnesses, the same information required to be disclosed at the conference between attorneys shall immediately be presented to opposing counsel.

(H) Additional Pre-Public Hearing Conference

If necessary or advisable, the Public Hearing Officer may adjourn the pre-public hearing conference from time to time or may order an additional pre-public hearing conference.

(I) Pre-Hearing Statement

The Hearing Officer may make a written report which recites the action taken at the pre-public hearing conference, the amendments allowed to the pleadings, and agreements made by the parties as to any of the matters considered which limit the issues before the Commission to those not disposed of by admissions or agreement at the pre-public hearing conference. Such a statement when entered shall control the subsequent course of action, unless modified thereafter to prevent manifest injustice. The Public Hearing Officer may at the start of the public hearing, after witnesses have been sworn and preliminary motions been considered, read into the record his/her statement regarding the scope of the hearing as defined in the pre-public hearing conference. Objections to the pre-public hearing statement may be noted on the record for appeal purposes.

Section 12.2 – Rules of Practice Governing Hearings

(A) Who May Appear

At public hearings all parties to the proceedings may appear in person or by counsel and shall be allowed to present and cross-examine witnesses and to submit evidence, both oral and documentary. The case in support of the Charging Party may be presented by the Charging Party or by an attorney retained by the Charging Party.

(B) Conduct of the Public Hearing

The hearing after a determination of probable cause shall be public, and it shall be conducted in an informal manner, without strict reliance upon technical rules of evidence as required in proceedings in judicial courts. The Public Hearing Officer may exclude irrelevant, immaterial, or unduly repetitious evidence and shall consider only the evidence introduced into the record.

(C) Real Evidence

The original charge, the answer, the finding of probable cause, all requests for discovery and all replies thereto, all required notices and proof of service for such notices, and all other pleadings of the parties shall automatically be made a part of the record. Other real evidence (e.g. letters, documents, etc.) to be considered by the Public Hearing Officer, must be offered and accepted into evidence at the hearing.

(D) Presence of Parties

No evidence shall be received at any public hearing except upon reasonable opportunity for all parties to be present. Each Charging Party and Respondent shall, unless excused by the Public Hearing Officer, be present in person at each hearing and may be represented by counsel if they desire. A corporate Respondent may appear at hearing by any duly appointed representative or by counsel. This provision shall not be construed to apply to reconsideration hearings initiated by the Charging Party after a determination of no probable cause.

(E) Issues Heard at the Public Hearing

The issues heard at the public hearing will be those which are raised in the pleadings. Issues not raised in the pleadings will be heard at the public hearing only upon an explicit finding by the Public Hearing Officer that no undue prejudice will result to a party if such issues are heard. The Public Hearing Officer may order a continuance upon his/her own motion or upon the motion of a party in order to permit a party to meet any newly raised issues.

(F) Separation of Witnesses

Upon motion of a party, the Public Hearing Officer may order the separation of witnesses.

(G) Continuance

For good cause shown, the Public Hearing Officer may grant a continuance on the motion of any party, or upon his/her own motion. Any continuance in excess of thirty (30) days must be approved by the Chairperson of the Commission.

(H) Evidence Concerning Retaliatory Action

Evidence concerning retaliatory action taken against any person shall be heard at hearing notwithstanding the absence of such an allegation in the pleadings. Retaliatory action means any action taken which is adverse to a party because:

- (i) A person filed the charge which is the basis of the action;
- (ii) A person gave testimony at a Commission hearing; and/or
- (iii) A person assisted the Commission in any way in connection with the Staff's investigation of the charge.

The Public Hearing Officer may give to the Respondent such time as he/she deems appropriate in order that the Respondent might meet an allegation of retaliatory action. The Public Hearing Officer may grant a continuance for this purpose. Nothing in this section shall be construed, however, as limiting the rights of an aggrieved individual to file a separate complaint with the Commission concerning such alleged retaliatory action.

(I) Duties of the Public Hearing Officer

The Public Hearing Officer shall have the power to administer oaths and affirmations, issue subpoenas, rule on offers of proof and receive relevant oral or documentary evidence, take or cause depositions to be taken, regulate conferences for the settlement or simplification of the issues by consent of the party or parties, and dispose of procedural motions and similar matters.

(J) Improper Conduct

The Public Hearing Officer may exclude from the public hearing rooms or from further participation in the proceeding, any person who engages in improper conduct before him/her except a party, a party's attorney, or a witness engaged in testifying. Improper conduct shall consist of action which severely impedes or makes impossible an orderly administrative adjudication.

Section 12.3 – Reopening Public Hearings

(A) Motion by a Party

After the public hearing has been closed, but prior to the decision by the Commission in the case, any party may file a motion with a Public Hearing Officer asking that the public hearing be reopened. The motion will state the reasons why the Public Hearing Officer should grant or deny the motion in writing, with a copy thereof to the parties. If he/she orders that the public hearing be reconvened, proper notice shall be sent to all parties to the action. Such notice shall include the Public Hearing Officer's written ruling, together with the date and time of the reconvened public hearing.

(B) Motion by the Commission



The Commission may, by majority vote, order the public hearing to be reconvened prior to its final determination in the case. When such an order is given, proper notice shall be sent to all parties involved in the case, in accordance with these rules. In its discretion, the Commission may specify an issue or issues which they wish the parties to address themselves.

#### Section 12.4 – Briefs and Post-Public Hearing Procedure

(A) Who May File Briefs

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 Public Hearing Officer shall designate. Failure to file a brief shall in no way prejudice the rights of any party.

(B) At the Close of Public Hearing

At the close of the public hearing the Public Hearing Officer may order the parties to submit a suggested findings of fact, conclusions of law, and a recommended order.

### RULE XIII

#### ORDERS

#### Section 13.1 – Recommended Order

(A) Formulation by Public Hearing Officer

The Public Hearing Officer shall review the evidence which was presented at the public hearing, together with supporting briefs, if any. If, upon review, the Public Hearing Officer finds the evidence supports a finding for the Charging Party, then he/she shall, after consultation with and review by the Commission Attorney, file with the Commission a recommended order in favor of the Charging Party. If, upon review, the Public Hearing Officer finds the evidence supports a finding for the Respondent, then he/she shall, after consultation with and review by the Commission Attorney, file with the Commission a recommended order in favor of the Respondent. The Public Hearing Officer's recommended order shall be in writing, signed by him/her, and shall state the Public Hearing Officer's findings of fact and conclusions of law.

(B) The Public Hearing Officer's recommended order shall be filed with the Commission including the proposed findings of fact and conclusions of law, within a reasonable time after the Public Hearing on the charge. The recommended order shall be filed together with a complete record of the proceedings (other than a transcript of the oral testimony). Proper notice of such filing shall be given to all persons who were parties to the public hearing.

#### Section 13.2 – Final Order

(A) Action by Commission

The Commission shall consider the evidence introduced at the public hearing in light of the Public Hearing Officer's Recommended Order, and shall determine whether the evidence supports the order recommended by the Public Hearing Officer. The Commission shall give substantial weight to the findings of the Public Hearing Officer based on credibility and demeanor of witnesses. If the evidence introduced at the public hearing when considered in the light most favorable to the Public Hearing Officer's decision supports the conclusions made or inferences drawn by the Public Hearing Officer, then the order recommended by the Public Hearing Officer should be affirmed as long as such recommendation is not contrary to law.

(B) Majority of the Commissioners

A final order can only be issued upon the concurrence of a majority of the Commissioners, as evidenced by their signatures thereon.

(C) Contents

The final order shall contain the Commission's findings of fact encompassing the relevant facts shown by the evidence, and conclusions of law, as well as a full description of the relief granted, if any. The Commission's findings shall be specific and shall clearly indicate in what way Respondent's actions were, or were not, in violation of the Ordinance. Each Commissioner who participated in the issuance of the final order may write a concurring or dissenting opinion, and attach it thereto.

(D) Possible Remedies

Upon finding of unlawful discriminatory practices within the meaning of the Ordinance, the Commission may impose any or all of the following remedies:

- (i) Require the party to cease and desist from the unlawful discriminatory practice;
- (ii) Require the party to take affirmative action, including the posting of signs or advertisements, and the restoration of the Charging Party's monetary losses which resulted from the discriminatory practices, as provided by the South Bend Human Rights Ordinance {Sec. 2-121(i)(1)};
- (iii) Require proof of compliance with the final order to be filed with the Commission at periodic intervals.

### Section 13.3 – Enforcement of the Final Order

(A) Showing for Enforcement

If the Commission determines that the person upon whom a final order has been served is not complying, it may seek decree for the enforcement of such order in an appropriate circuit or superior court upon a showing that such person is subject to the Commission’s jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought, and such court shall have jurisdiction to enforce such order or orders by a prohibitory or mandatory injunction, or by a petition for enforcement.

### RULE XIV INJUNCTIONS

### Section 14.1 – Emergency Situations

(A) Director Determination

Where a charge has been filed with the Commission, the Director may determine that irreparable harm will be suffered by the Charging Party if the alleged discriminatory practices are allowed to continue. This determination may be made only after the Director has consulted the staff attorney.

(B) Petition to Chairperson for Order to File in Court

When the Director has determined that irreparable harm will be suffered by the Charging Party if the alleged discriminatory practices are allowed to continue, the Director by the staff attorney shall petition the Chairperson for a preliminary order authorizing the Director to file a request in circuit or superior court for a temporary restraining order, preliminary injunction, or permanent injunction. The Chairperson shall issue such a preliminary order if he/she finds:

- (i) That the Commission has jurisdiction over the parties and over the subject matter;
- (ii) That the Charging Party is suffering, and will continue to suffer, irreparable harm if a temporary emergency order of the Court is not obtained; and
- (iii) That the Charging Party is likely to succeed on the merits of his/her complaint filed with the Commission.

The Chairperson’s preliminary order under this section shall issue only after such preliminary order has been approved by the Department of Law. The preliminary order shall be in writing and it shall become a part of the permanent record of the Commission’s proceedings relating to the charge.

(C) The Department of Law shall file suit on behalf of the Commission in superior or circuit court, for the issuance of a temporary restraining order, preliminary

injunction, or permanent injunction following satisfaction of the procedural steps set out in these rules and the issuance of a preliminary order to so proceed by the Chairperson.

## RULE XV

### JUDICIAL REVIEW

#### Section 15.1 – Filing for Review

(A) Who May Seek Review

Either the Charging Party or the Respondent may seek judicial review of a final order of the Commission, if aggrieved by such order.

(B) Rules Governing Review

All proceedings for judicial review of final orders shall be governed by the Administrative Adjudication Act, Sec. 4-21.5-1 et seq., Indiana Code of 1971.

(C) Record of Hearing

For purposes of judicial review, the record of the public hearing shall consist of a transcript of the oral testimony (when available), the exhibits admitted into evidence, all notices, pleadings, exceptions, motions, requests, and other papers filed with the Commission with the exception of briefs or arguments of law. The cost of producing such record for judicial review shall be borne by the party making the appeal. The Commission may require the deposit of reasonable security for the payment of such cost before producing such record.

## RULE XVI

### REVOCATION OR SUSPENSION OF LICENSES

#### Section 16.1 – Notice of Licensee and Licensing Agency

(A) Procedure

Any licensee of the City of South Bend who is found to have committed a discriminatory practice shall be put on notice by 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 within the City of South Bend 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.

## RULE XVII

### CONSTRUCTION OF THESE REGULATIONS

#### Section 17.1 – How Construed and Partial Invalidity

(A) Broad Construction

These regulations and rules shall be liberally construed to accomplish the purpose of Ordinance No. 6003-76, as amended, by Ordinance 6635-79 and the policies of the Commission.

(B) Partial Invalidity

If any provision of these rules or the application of a provision to any person or circumstances shall be held invalid, the remainder of these rules 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.

(C) Time Limitations

All time limitations within these rules shall be construed so as to do substantial justice to the parties involved.

## RULES XVIII

### DEFAULT

#### Section 18.1 – Entry

When a party has failed to plead or otherwise defend as provided by these rules or when a party has failed to appear for a public hearing after a proper notice, and that fact is made to appear by affidavit or otherwise, the party has defaulted.

#### Section 18.2 – Order

(A) Failure to Answer a Charge

The Charging Party may apply to the Chairperson for an Order by Default in cases where the Respondent has failed to answer the charge within the time allowed by these rules.

(B) Failure to Appear at Public Hearing

Either party may apply to the Hearing Officer for an Order by Default in cases when, after proper notice, the other party has failed to appear at a public hearing.

(C) Order Approved by Commission

To be effective, all Orders of Default shall be approved by a majority of the Commissioners.

(D) Hearing of Evidence After Default Order

The Chairperson or the Hearing Officer may order that a public hearing take place after an Order by Default has been granted for the purposes of determining the truth of the allegations, the amount of damages, recoverable, or for the purposes of investigating any other matter related to the Order by Default.

(E) Notice

The Commission shall give notice in writing by certified mail with return receipt requested, addressed to the non-answering Respondent or non-appearing party at his/her last known place of residence, or place of business, which shall contain a statement that such party's failure to answer a charge or appear at a public hearing has caused an Order by Default to be entered against such non-answering Respondent or non-appearing party.

Section 18.3 – Setting Aside Default

Upon motion made within a reasonable time of the entering of an Order by Default and upon good cause shown, the Chairperson or the Hearing Officer may set aside such order.

RULE XIX

HOUSING CHARGES – FINAL DISPOSITION AND REPRESENTATION  
OF CHARGING PARTY

Section 19.1 – Final Disposition Within One Year

For any charge of part of a charge alleging a discriminatory housing practice or housing related practice, the Commission must make final administrative disposition of the charge within one (1) year of the date of receipt of the charge unless it is impracticable to do so. If the Commission fails to do so, it must notify the Charging Party and Respondent in writing of the reasons for not doing so.

Section 19.2 – Attorney Representation of Charging Party in Housing Charges

In all housing charges where probable cause is found, the Charging Party shall be represented at agency expenses, at all such stages of the Commission's proceedings through public hearing and upon judicial review of any final order challenged by a Respondent. If Charging Party elects to have damages determined in another forum where damages are recoverable under the federal Fair Housing Act, the Commission's attorney at no cost to Charging Party shall represent Charging Party in such action.

Section 19.3 – Notice to Charging Party of Damage Alternatives

Immediately after the filing of a complaint of housing discrimination, the Director shall notify Charging Party in writing of all damages to which Charging Party may be entitled under the federal Fair Housing Act and shall indicate in such notice any differences between damages with the Commission is empowered to award and those which may be

awarded under the federal Fair Housing Act. Charging Party shall have the absolute right to waive a determination of damages by the Commission and to have damages determined in any other court of proper jurisdiction. Charging Party shall request in writing within five (5) days of favorable final Commission action that he/she desires to have damages determined in a forum other than the Commission, and Charging Party shall be represented by the Commission's attorney in such damage action at no cost to Charging Party.