

Michigan City Human Rights Commission

Rules and Regulations

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Rule 1

DEFINITIONS

Section 1.1

Definitions:

When used in these rules, or in proceedings before the Commission, unless the context clearly requires otherwise, the following terms shall have meaning as indicated:

- A) The term “affirmative action” shall mean those acts which the Commission deems necessary to assure compliance with the Michigan City Human Rights Ordinance.
- B) The term “Commission” means the Michigan City Human Rights Commission.
- C) The term “Commission Attorney” shall mean the City Attorney of Michigan City, or such assistants of the City Attorney as may be assigned to the Commission, or such other attorney as may be engaged by the Commission or voluntarily lend his services to the Commission.
- D) The term “Complaint” means any aggrieved person claiming to have been injured or believing such person will be injured or will be aggrieved by a discriminatory Commission charging that a discriminatory practice was committed against a person, other than himself, or a class of people, in order to vindicate the public policy of the city of Michigan City as defined in Section 2 of this Ordinance.
- E) The term “complaint” means any written, signed grievance filed by a complainant, under penalty of perjury, with the Commission.

To be acceptable to the Commission, a complaint shall be sufficiently complete so as to reflect properly the full name and address of the respondent against whom the complaint is made; the alleged discriminatory practice and a statement of particulars thereof; the date or dates and places of the alleged discriminatory practice, and if the alleged discriminatory practice is of a continuing nature, the dates between which said continuing acts of discrimination are alleged to have occurred; and statement as to any other form based upon the same grievance as is alleged in the complaint together with a statement as to the status or disposition of such other action. No complaint shall be valid unless filed within 90 (ninety) days from the date of the alleged discriminatory practice in a matter regarding public accommodations or employment. No housing discrimination complaints shall be valid unless filed within 1 (one) year from the date of the occurrence of the alleged discriminatory practice. 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 practice up to and including the date upon which it shall have ceased.

- F) The term “consent agreement” shall mean a formal agreement which is entered into in lieu of adjudication, formulated by the Director and calculated to give justice to the complainant and vindicate the public policy of the City of Michigan City.
- G) The term “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.
- H) The term “Director” shall mean the Director of the Michigan City Human Rights Commission.
- I) The term “discriminatory practice” shall mean the exclusion of a person by another person from equal opportunities because of race, religion, color, sex, national origin, ancestry, disability, or familial status; or the promotion of racial segregation or separation in any manner, including but not limited to, the inducing of, or attempting to induce, for profit any person to sell or rent any dwelling by representations regarding the entry or prospective entry in the neighborhood of a person or persons of a particular race, religion, color, sex, national origin, ancestry, disability, or familial status. 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 Michigan City Ordinance No. 3283.
- J) The term “educational institution” includes all public and private schools and training centers except those affiliated with religious institutions which may give preference to members of their religious group in selecting their students.
- K) The term “employee” includes any person employed by another for wages or salary; provided that it should not include any individual employed by his spouse, or child.
- L) The term “employer” includes any person employing ten (10) or more employees within the city and includes the city and any subdivision thereof; except that the term “employer” does not include any not-for-profit corporation or association organized exclusively for fraternal or religious purposes, or any school, educational or charitable religious institution owned or conducted by, or affiliated with a church or religious institution, nor any exclusively social club, corporation or association that is not organized for profit, but shall include any governmental unit, agency or employee as to which the city has the power to legislate.

- M) The term “employment agency” includes any person undertaking, with or without compensation, to procure, recruit, refer, or place employees.
- N) The term “financial institution” means banks, banking, organizations; mortgage company, insurance company, or other lender to whom application is made for financial assistance for the purchase, lease acquisition, construction, rehabilitation, repair, maintenance, or improvement of real property, or an individual employed by or acting on behalf of any of these.
- O) The term “Hearing Officer” shall mean the elected Commissioner or another person responsible for conducting a public hearing to rule on objections to a consent agreement which is approved by respondent and the Director. In addition, Hearing Officer shall rule on all pre-hearing requests, motions, petitions, and rule in all motions and objections during the public hearing. If no Commissioner is elected by the Commission, the Chairperson shall have the duty to be “Hearing Officer” on all such issues.
- P) The term “labor organization” includes any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances; terms or conditions of employment, or for mutual aid or protection in relation to employment.
- Q) The term “majority of the Commission” as used in these rules reference to any orders, adoptions, consents, concurrences and rulings, shall mean a simple majority of the Commission; provided that a Commissioner who has assisted in the investigation of a complaint, or who has been appointed by the Chairperson to hear probable cause or who has been otherwise made ineligible to participate in a final order by these rules may not be counted as a member of the Commission for the purpose of calculating a majority in that particular instance nor shall such Commissioners vote in such instances.
- R) The term “Order by Default” shall mean an order issued by the Commission Chairperson after proper notice, against a respondent who has failed to answer a complaint or against a party who has failed to appear at a public hearing. Upon the concurrence of a majority of the Commission, an Order of Default shall have the same scope and effect as a final order issued by the Commission subsequent to a public hearing.
- S) The term “party” shall mean either the complainant, the respondent, and intervenor, or where appropriate, the Michigan City Human Rights Commission.
- T) The term “person” includes an association, partnership, or corporation, as well as a natural person. The term “person” as applied to partnerships or other associations, includes their officers and directors.
- U) The term “Chairperson” shall mean a Commissioner elected by the Commission Chairperson to preside over monthly meetings of the Commission. Will recommend the

termination of appointments for any member who is not filling his/her duties and responsibilities of the Commission as set forth in the By-Laws. Will make appointments to Commission committees.

The Chairperson of the Commission shall rule on all motions and petitions prior to the establishment of probable cause unless he sees fit to delegate these duties, in certain instances, to another Commissioner or another agent appointed to sit at a public hearing.

- V) The term “probable cause” shall mean 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 a discriminatory practice prohibited by the Michigan City Human Rights Ordinance No. 3283 has occurred.
- W) The term “proper notice” as used in these rules shall mean either mailing by certified mail with return receipt requested, or any other means reasonably calculated to inform the concerned parties.
- X) The term “public accommodation” means any person or establishment which caters or offers its services, facilities, or goods to the general public.
- Y) The term “respondent” means one or more persons against whom a complaint is filed under this ordinance, and who the complaint alleges has committed or is committing a discriminatory practice.
- Z) The term “sex” as it applies to segregation or separation shall apply to all types of employment, education, public accommodations, and housing; provided, however, that (1) it shall not be a discriminatory practice to maintain separate restrooms or dressing rooms; and that (2) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, or for an employer, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program on the basis of sex in those certain instances where sex is a bona fide occupational operation of that particular business or enterprise; and that (3) it shall not be a discriminatory practice for a private or religious educational institution to continue to maintain and enforce a policy of admitting students of one sex only.
- AA) The term “disability” means (1) physical or mental impairment which substantially limits one or more of a person’s major life activities, or (2) a record of such an impairment and includes (3) a person who is regarded as having such an impairment (4) this term does not include current illegal use of or addiction to a controlled substance.
- BB) The term “Familial Status” includes one or more individuals (who have not attained the age of 18 years) being domiciled with:

1. A parent(s) or another person(s) having legal custody of such individual or individuals: or

2. The designee of such parent(s) or other person(s) having such custody, with the written permission of parent(s) or other person(s).

The protections afforded against housing discrimination on the basis of familial status shall apply to any person(s) who is pregnant or is in the process of securing legal custody of any individual(s) who has not attained the age of 18 years.

CC) The term “Aggrieved Person” includes any person who:

1. Claims to have been injured by a discriminatory practice; or

2. Believes that the person will be injured by a discriminatory practice that is about to occur.

DD) The term “Dwelling” means any building, structure, or part of a building or structure that is occupied as, or designed or intended for occupancy as, a residence by one (1) or more families; or any vacant land that is offered for sale or lease for the construction or location of a building, structure, or part of a building or structure that is occupied as, or designed or intended for occupancy as a residence by one (1) or more families.

Rule 2

GENERAL INFORMATION

Section 2.1 Scope and Application of these Rules:

A) Application:

These rules apply to administrative adjudication conducted before the City of Michigan City Human Rights Commission. “Administrative adjudication” means the administrative investigation, hearing, and resolution of controversies between individuals over whom the agency has jurisdiction. The Commission may not waive or otherwise modify these rules for a particular administrative adjudication.

B) Civil Rights Within Commission Jurisdiction:

The civil rights within the jurisdiction of the Commission shall be those guaranteed by the Michigan City Human Rights Ordinance No. 3283.

Section 2.2 Scope of Coverage:

A) Authority:

Michigan City Human Rights Ordinance No. 3283 establishes the Michigan City Human Rights Commission. That law prohibits denial of equal opportunity to individuals because of their race, religion, color, sex, national origin, ancestry, familial status, or disability, in the areas of education, employment, public accommodations, and acquisition of real property through purchase or rental.

Section 2.3 Adoption and Amendment:

A) When Effective:

These rules shall be adopted by majority of the Commission at a public meeting and amendments thereto must be adopted by a majority of the Commission at a public meeting. After adoption by a majority of the Commission at a public meeting, these rules and amendments thereto become effective. Copies of these rules shall be available to the public at the Commission’s office in reasonable quantity. Cases pending when these rules become effective shall be subject to these rules, provided that the presiding officer may suspend application of a given rule to such pending cases, where application of such rule would cause prejudice or injustice.

B) Authority:

These rules and regulations are adopted and promulgated pursuant to the authority as set forth in Michigan City Human Rights Ordinance No. 3283, Section six (6), part C.

Section 2.4 Duties of the Chairperson:

A) Incapacity:

Duties of the Chairperson under these rules shall include, ruling on all motions and issues which are brought in the absence of, or prior to appointment of, a hearing officer, setting the time and place of the public hearing, and determining which Commissioners or other persons shall participate in the public hearing. In the event of the incapacity of the Chairperson to fulfill his duties under these rules, the Vice-Chairperson shall assume the duties of the Chairperson for the duration of the incapacity.

Section 2.5 Filing of Complaints with the Commission:

A) Who May File and Time Limits:

Any person claiming to be aggrieved by a discriminatory practice or act contrary to the provisions of the Michigan City Human Rights Ordinance No. 3283 may make, sign, and file a complaint with the Commission; however, no such complaint shall be valid unless filed within 90 (ninety) days from the date of the occurrence of the alleged discriminatory practice or from the date of the termination of a published and meaningful grievance procedure provided by a respondent, employer, or a labor union. No housing discrimination complaints shall be valid unless filed within 1 (one) year from the date of the occurrence of the alleged discriminatory practice.

B) Expansion of an Individual Complaint:

Where a complaint is filed in accordance with these rules and the Director of the Commission determines that relief for more than the individual complainant is appropriate, he may seek amendment of the complaint in the fashion as does a complainant in Section 2.9 of these rules, or he may himself 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 to the complaint of the complainant for purposes of all subsequent proceedings or may be docketed separately at the discretion of the Director. Final judgment of the validity of such amended or separate complaints shall be made by the Chairperson.

Section 2.6 Manner of Filing:

A) Where to File:

Complaints may be filed with the Commission at its office either by personal delivery or mail. The Commission's staff may provide any assistance in drafting and filing a complaint.

B) What Constitutes Filing:

The Complainant shall be deemed filed as of the date of;

1) The postmark, if the complaint is filed by mail, or its receipt at the Commission's office if not postmark is visible; and,

2) Receipt at the Commission's office if the complaint is filed by personal delivery.

3) If oral presentation of a complaint is made in the Commission's office to a staff member who receives the oral complaint and prepares a written complaint, the complaint shall be deemed filed as of the date of the signing of the complaint by the aggrieved party.

4) A complaint is filed when it is received by the Commission in a form that reasonably meets the standards as set out herein.

C) Complaints filed with other agencies.

1) The Michigan City Human Rights Commission's staff may assist individuals with the filing of complaints of discrimination with the Indiana Civil Rights Commission, or any other agency having jurisdiction over the issues involved in the Complaint. If the federal government has referred a complaint to the Commission or has deferred jurisdiction over the subject matter of the complaint to the Commission, the Commission shall promptly investigate the allegations set forth in the complaint.

2) If the federal government has referred a complaint to the commission or has deferred jurisdiction over the subject matter of the complaint to the commission, the commission shall promptly investigate the allegations set forth in the complaint.

3) The Commission may issue an order based on findings and determinations by the Federal Department of Housing and Urban Development concerning a complaint that has been filed with the federal agency and with the Michigan City Human Rights Commission. The director or his/her staff shall review the investigative file, consult with the federal agency issuing the determination, and upon consultation with the Department of Law, the Director may present a recommendation to the Commission to accept the determination or findings of the federal agency. If the Commission adopts the findings and determination of the federal agency, it shall notify the Complainant and Respondent of its determination.

Section 2.7 Withdrawal of a Complaint:

A) Who May Withdraw

A complaint, or any part thereof, may be withdrawn upon request by the

Complainant as hereinafter set forth:

- 1) 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;
- 2) 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; and,
- 3) A request for withdrawal shall be evidenced by a document signed by the complainant or by an affidavit sworn to by the Director of his agent, stating complainant's desire to withdraw, and the reasons therefore.

B) Director Withdrawal:

Prior to setting a case for public hearing, the Director may withdraw a complaint, or any part thereof, upon a failure to locate a complainant after a reasonable search. After such case has been set for public hearing, the written consent of a majority of the Commission must be obtained in order to withdraw a case.

Section 2.8 Filing an Answer:

A) Who May Answer and Time Limits:

The respondent shall himself, or by his duly authorized representative answer the complaint. The answer shall be in writing and signed by the respondent or his duly authorized representative and shall be filed with the Commission within fifteen (15) days after service, except in using complaints respondents shall answer within ten (10) days after service, upon respondent of a copy of the complaint. Investigation and discovery under these rules may proceed prior to the filing of the answer.

B) Immediate Relief:

The respondent may choose not to file an answer and in the alternative, choose to grant immediate relief to the complainant within five (5) days after service upon the respondent of a copy of the complaint. If complainant accepts the offer of relief and the relief offered is acceptable to the Commission as a just resolution of the complaint, the complaint will be dismissed at this point to full performance.

C) Failure to File an Answer:

If respondent fails to file an answer to a complaint within fifteen (15) days after service upon the respondent of a copy of the complaint, ten (10) days in housing complaints, the Commission may proceed pursuant to Rules 6 for an Order by Default.

D) Defense and New Matter:

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

E) Extension of Time for Filing:

Upon application, the Hearing Officer, for good cause shown, may extend the time within which the answer may be filed.

Section 2.9 Amendments to a Complaint and Answer:

A) At any time prior to the issuance of the notice of hearing, a complaint, or any part thereof, may be amended as a matter of right by the complainant, to clarify the allegations, to correct errors, or to include additional allegations of discrimination against the respondent or other individuals with regard to the alleged act of discrimination. After the issuance of a notice of hearing the Hearing Officer, in his discretion, may permit the complaint to be amended as justice requires.

B) Amendment to the Answer:

The respondent may amend his answer as a matter of right at any time until six (6) days, prior to the date scheduled for the public hearing and, thereafter, at the discretion of the Hearing Officer.

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 complaint 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 raise these issues may be made upon motion of any party at any time, but failure to do 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 made by the pleadings, the 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 in maintaining his defense on the merits. The Hearing Officer may grant a continuance to enable the objecting party to meet such evidence.

Section 2.10 Ruling on Pre-Hearing Motions and Petitions:

A) Who Rules on Motions and Petitions:

When the complainant or the respondent files a pre-hearing motion or hearing motion or petition, the Hearing Officer, or the Chairperson (if no Hearing Officer) shall rule on the motion or petition.

B) 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 his defense to the allegations raised in the complaint.

Section 2.11 Disqualification:

A) Voluntary:

If at any time during the processing of a complaint, either before or after notice of public hearing is sent, 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 may voluntarily disqualify himself or herself from any participation by submitting a written document to the Chairperson designating the kind and extent of his interest in that particular case.

B) Grounds:

1) A Commissioner owning or being employed by a respondent shall be disqualified from participating in any aspect of the case involving said respondent.

2) Participation either as an investigator, or conciliation committee member shall disqualify a Commissioner from participating as a public hearing officer involving the same case.

Rule 3

PROCESSING A COMPLAINT

Section 3.1 Pre-Investigation:

A) Docketing of Charge:

Each complaint shall be given a case number in order of the date of filing with the Commission.

B) Mailing of Notice:

The respondent shall be sent by proper notice, a copy of the verified complaint within ten (10) days of filing.

C) Selection of Investigator:

The Director may conduct the investigation of the complaint or assign all or any part thereof to a member or agent of the staff or a Commissioner: Provided that if a Commissioner takes part in an investigation, he shall be disqualified from any further participation in the case except as a witness in a public hearing on the complaint or as a member of the conciliation committee.

Section 3.2 Investigation and Finding:

A) Investigation of Complaint:

Subsequent to the filing of a verified complaint, the Director shall initiate an investigation pursuant to Section 3.1 and the investigator shall formulate a recommendation of whether there exists probable cause to believe that an illegal act of discrimination did occur in violation of Ordinance No. 3283.

B) Probable Cause Hearing:

Three (3) Commissioners shall serve as Probable Cause Committee conciliation members to hold hearing sessions to determine whether there is probable cause in no more than three (3) pending cases during their Probable Cause Committee assignment. The Chairperson of the Committee shall arrange a suitable time and place for such probable cause hearing(s), and may arrange more than one such hearing. No Commissioner who serves as a Probable Cause Committee member on a given complaint shall participate in a public hearing nor issue a final order on the same complaint.

C) Probable Cause Decision and Notice:

- 1) The vote of a majority of Probable Cause Committee members for a finding of probable cause shall constitute a formal finding of probable cause, whereupon the respondent shall be sent, by proper notice, a copy of the ruling as well as a copy of the verified complaint, if it has not previously been served. The Commission may then set a date for public hearing on the complaint. Conciliation will proceed under
- 2) Continuance of Hearing - the Probable Cause Committee may continue a probable cause hearing for further investigation.
- 3) If a majority of Probable Cause Committee vote in favor of a finding of no probable cause, proper notice of such a ruling shall be sent to the complainant and respondent, and the complaint shall be dismissed. If the complainant is aggrieved by that decision then it shall be deemed that the complainant has exhausted his/her administrative remedies pursuant to this Ordinance and then may proceed to avail himself/herself of any other legal or equitable remedy.

Section 3.3 Consent Agreements:

A) Conciliation Consent Agreement

- 1) The Commission shall, during the period beginning with the filing of a complaint, to the extent feasible, engage in conciliation with respect to the complaint.
- 2) A conciliation consent agreement is an agreement between a respondent and the complainant and is subject to Commission approval.
- 3) A conciliation consent agreement may provide for binding arbitration or other methods of dispute resolution. Dispute resolution that results from a conciliation agreement may authorize appropriate relief, including monetary relief.
- 4) The conciliation consent agreement shall be made public unless the complainant and the respondent otherwise agree and the Commission determines that disclosure is not required to further the purposes of the law.
- 5) After completion of the Commission's investigation, the Commission shall make available to the aggrieved person and the respondent, information derived from the investigation and the final investigation report relating to that investigation.

B) Successful Conciliation:

If the terms which are reached are approved by the complainant and the respondent and the consent agreement is signed by both, the agreement shall become effective when executed by the Director.

C) Execution of Consent Agreement:

Upon approval of the consent agreement by the Director and the parties involved whose consent shall be evidenced by their signature thereon, the consent agreement shall become effective. If the consent agreement is not approved, it shall be of no effect and the Commission shall order the Director to resume negotiations pursuant to these rules. Upon approval a consent agreement shall have the same force and effect and shall be subject to the same judicial review as a final order of the Commission.

D) Unsuccessful Conciliation

If the respondent ignores or does not agree to the terms of a consent agreement within ten (10) days of receipt of the consent agreement, the Commission shall proceed in accordance with these rules toward the holding of a public hearing on the complaint.

Rule 4

Discovery

Section 4.1 Prior to the Setting of a Public Hearing:

Prior to the setting of a public hearing before the Michigan City Human Right Commission, the Commission shall be entitled to all discovery provisions of Rules 26 through 37 of the Indiana Rules of Civil Procedure as a necessary aid to its investigatory function. The Hearing Officer, elected by the Commission, shall issue all protective enforcement orders as needed. If a party or a witness does not comply with a protective or enforcement order of the Hearing Officer, the Commission may obtain a decree of court for the enforcement of such order in the LaPorte Circuit or Superior Court.

Section 4.2 After the Setting of a Public Hearing:

Whenever a public hearing before the Michigan City Human Rights Commission is set as provided by these rules, all parties to that hearing shall be entitled to the discovery provisions of Rules 26 through 37 of the Indiana Rules of Trial Procedure, including, but not limited to the power to take depositions and serve interrogatories. Protective and enforcement orders shall be issued by the Hearing Officer. If a party or witness does not comply with a protective or enforcement order of the Hearing Officer, the Commission may obtain a decree of court for the enforcement of such order in the LaPorte Circuit or Superior Court.

Section 4.3 Time Limit:

The party upon whom the interrogatories have been served shall serve a copy of the answers and objections within twenty (20) days after the service or within such shorter or longer time as the Hearing Officer may allow.

Section 4.4 Failure to Answer Interrogatories:

A) If a respondent has been served with interrogatories, pursuant to this rule, and notice of the consequences of the failure to answer interrogatories has been given to the respondent, and the respondent fails either to answer the interrogatories or to file a motion to strike interrogatories within the time specified therein, the Hearing Officer, or the Chairperson, if no Hearing Officer has been appointed, shall;

1) Enter an order requiring the answering of said interrogatories and extending for an additional ten (10) days the time within which answers to interrogatories are required and serve this order on respondent; and serve the following notice and order:

2) "NOTICE" is hereby given that a complaint has been served upon you charging you with a violation of the Law Against Discrimination (Ordinance No. 3283). Pursuant to this Commission's authority under said ordinance, interrogatories have not been answered and filed within the time as therein prescribed. Should you fail to fully answer and file the answer to interrogatories within ten(10) days, a default shall be entered in this case. Said default shall constitute:

- a) An admission that the interrogatories, if answered, would have established facts in accordance with the claim of the complainant.
- b) A waiver of your right to have this Commission conduct further investigation, find whether or not there is probable cause, make conciliation efforts or hold a public hearing; and,
- c) A waiver of your right to present any and all defenses.

THEREFORE, it is on this _____ day of _____ .

ORDERED:

- C-1) Respondent(s) shall fully answer and file answers to interrogatories previously served.
- C-2) Respondent(s) shall file said answers on or within the tenth day following the date of this order.
- B) In the event the respondent files a motion to strike interrogatories within the _____ time set to answer interrogatories, said motion shall be supported by affidavit and/or brief and shall be ruled upon by the Hearing Officer or the Chairman on the motion papers without oral argument; if said motion is denied, the Hearing Officer or Chairperson shall then follow the procedure set forth in subsection (A) of this Section, or enter any other appropriate order.
- C) If after the expiration date of the Hearing Officer's or Chairperson's order extending time to answer interrogatories, the respondent has failed to fully answer and file the interrogatory with the Commission:
 - 1) Said failure shall result in the matters regarding which questions were asked being taken as established for the purposes of the case in accordance with the claim of the complainant;
 - 2) Said failure shall constitute a waiver of the respondent's right to an

investigation, finding of probable cause, conciliation efforts or public hearing;

3) Said failure shall result in the suppression of any and all defenses of the respondent; and,

4) The Hearing Officer or Chairperson shall order the entry of a default on the docket of the Commission, and the regular default procedure shall be followed as provided in Rule 6.

Rule 5

SERVICE OF PROCESS

Section 5.1 Filing with the Commission:

A) Manner of Filing:

Complaints filed with the Commission shall be filed as provided in Rule 2.6. All other pleadings, motions, petitions, requests and other instruments shall be filed with Commission by delivery in person to the Commission Office in Michigan City during regular business hours or by mailing the original to the Commission Office. All such instruments shall be signed by the party on whose behalf they are filed or his attorney and shall show the party's address and phone number or that of his attorney.

B) Filing with the Commission:

Any notice or order provided for in these rules may be served as subpoenas are served under the terms of Section 5.2 (B), provided that notice of the filing of any written order, agreement or other instrument shall be accompanied by a copy thereof. 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 or order sent to the party.

C) Form and Period of Notice:

In all cases in which the Commission is the moving party, all notices required, by these rules 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 or shorter period of time is specifically 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.

D) Motions:

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 which, unless made during a hearing, shall be made in writing, shall state specifically the grounds therefore and shall 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 proper notice thereof shall be given to the other parties.

Section 5.2 Subpoenas:

A) Issuance:

The Michigan City Human Rights Commission may issue subpoenas at any time on its own motion and shall issue subpoenas to any party upon request, after a public hearing has been set.

B) Service of Subpoenas:

A subpoena issued by the Michigan City Human Rights Commission may be served by a party or any person. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person, or an individual acting in a representative capacity, by:

- 1) Sending a copy of the subpoena by registered or certified mail with a return receipt requested and returned showing receipt of the letters;
- 2) Delivering a copy of the subpoena personally;
- 3) Leaving a copy of the subpoena at his dwelling house or usual place of abode; and,
- 4) Serving his agent as provided by rule, statute or valid agreement.

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

C) Form and Content of Subpoena:

Subpoenas issued by the Commission shall be signed by an individual Commissioner, they shall state the name of the Commission and the title of the action without naming more than the first named complainant and respondent in the complaint and the docket number.

D) For Production of Documentary Evidence:

A subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

E) For Attendance and Giving of Testimony:

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

F) Quashing or Modifying Subpoena”

The Chairperson or Vice Chairperson or if both are unavailable, any Commissioner, or if a Hearing Officer has been appointed by the Chairperson, the Hearing Officer, upon motion may promptly:

- 1) Quash or modify the subpoena if it is unreasonable or oppressive; and,
- 2) Condition denial of the motion 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) Failure to Obey a Subpoena:

If any person called as a witness by a subpoena shall fail to obey such a subpoena to appear before the Commission, or its authorized representative or agent shall refuse to testify or to answer any question or to produce any book, record, paper, or other document when required to do so, such contumacy or refusal shall constitute a violation of Ordinance No. 3283. The Commission through the City Attorney shall have the power to institute actions for appropriate legal or equitable relief in LaPorte Circuit or Superior Court to obtain enforcement of any Commission order of subpoena.

H) Confidentiality:

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

I) When a subpoena is served by the sheriff or his deputies, his return shall be proof of services must be shown by affidavit. No fees or costs for the service shown by affidavit. No fees or costs for the service of a subpoena shall be collected or charged as cost except when service is made by the sheriff or his deputies.

Rule 6

DEFAULT

Section 6.1 Entry:

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

Section 6.2 Supplemental Matters and Notice:

A) Supplemental Matters:

If, in order to enable the Commission to enter an Order by Default or to carry such Order by Default into effect, it is necessary to determine the amount of damages or to establish the truth of any allegation by evidence or to make an investigation of any other matter, the Commission may conduct such hearing as it deems necessary and proper in accordance with Rule 11.

B) 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 or her last known place of residence, or place of business, which shall contain a statement that such party's failure to answer a complaint 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 6.3 Setting Aside Default:

Upon application within a reasonable time and upon good cause shown, the Chairperson of the Commission may set aside an Order by Default.

Section 6.4 Order Against Governmental Organizations:

An Order by Default may be entered against a governmental organization.

Rule 7
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, the party to be brought in by amendment:

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

The requirement of subsections (1) and (2) hereof with respect to a Governmental organization to be brought into the action as defendant is satisfied:

- 1) In the case of a state or governmental organization by delivery or mailing of process to the Attorney General or to governmental executives; and,
- 2) In the case of a local governmental organization by delivery or mailing of process to its attorney as provided by law, to a governmental executive thereof, or to the officer holding the office if suit is against the officer or an office.

Section 7.2 Intervention:

A) Who May Intervene:

Any person not initially joined in the action or preceding 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 within the discretion of the Hearing Officer as justice may require.

Section 7.3 Joinder of Persons Needed for a Just Adjudication:

A) Persons to be Joined if Feasible:

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

- 1) In his absence complete relief can not be accorded among those already parties; and,
- 2) He claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may:
 - a) As a practical matter impair or impede his ability to protect that interest; and,
 - b) Leave any of the persons already parties subject to substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

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

B) Whenever Joinder is not Feasible:

Notwithstanding subdivision (A) of this section when a person described in subsection (1) and (2) is not made a party, the Hearing Officer may treat the absent party as not dispensable and allow the action to proceed without him; or the Hearing Officer may treat such absent party as indispensable and dismiss the action if he is not subject to process. In determining whether or not a party is indispensable the Hearing Officer shall consider the following factors:

- 1) The extent to which a judgement rendered in the person's absence might be prejudicial to him or 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; and,
- 4) Whether the complainant will have an adequate remedy if the complaint is dismissed for nonjoinder.

Rule 8

PRACTICE BEFORE THE COMMISSION

Section 8.1 Appearances Before the Commission:

A) Who May Appear for an Individual:

Any person who is a respondent may appear before the Michigan City Human Rights Commission in his own behalf, by an attorney, or by any other person.

B) Who May Appear for the Complainant:

The case in support of the complainant may be presented before the Commission, Public Hearing Officer, by the complainant representing himself, or a private attorney admitted to practice and in good standing before the bar of any of the United States or District of Columbia, or a intern pursuing an education in a legal institution unless the complainant otherwise designates.

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 proceeding before the Commission. In order to preserve this policy, hearings shall be held in Michigan City unless otherwise ordered by the Commission.

Rule 9

PRE-HEARING CONFERENCE

Section 9.1 Pre-Hearing Conference:

A) Simplification and Stipulations:

In any hearing before the Commission, the Hearing Officer in his discretion or upon motion of any party may direct the attorneys for the parties to appear before him for a pre-hearing conference to consider:

- 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 which 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 trial and the general nature of their expected testimony; and,
- 6) Such other matters as may aid in the disposition of the action.

B) Simplification and Stipulations:

Each attorney shall mark for identification and provide opposing counsel an opportunity to inspect and copy all exhibits which he expects to introduce at the hearing. Numbers or marks placed on such exhibits at the pre-hearing conference will be stricken when such exhibits are introduced at the hearing. The exhibits must also indicate the party identifying the exhibits. Exhibits of such nature as to prohibit or make impracticable their production at the conference shall be identified and notice shall be given of their intended use. Necessary arrangements must be made to afford opposing counsel an opportunity to examine such exhibits.

C) Simplifications and Stipulations:

Written stipulations shall be prepared with reference to all exhibits exchanged 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 exhibits, their use in opening statements, and the provisions made for the inspection of identified exhibits. The original

of the exhibit stipulations shall be presented to the Hearing Officer at the pre-hearing conference.

D) Simplifications and Stipulations:

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 Hearing Officer at the time of the pre-hearing conference.

E) Simplifications and Stipulations:

Attorneys for each of the 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 Hearing Officer at the time of the pre-hearing conference.

F) Simplifications and Stipulations:

If any party is not represented by counsel, he may represent himself at such a conference and shall be entitled to all the documents otherwise allowed to Attorneys.

G) When Called - Notice:

Unless otherwise ordered by the Commission, the pre-hearing conference shall not be called until after attempted conciliation has failed.

H) Participants:

At least one attorney planning to take part in the hearing shall appear for each of the parties and participate in the pre-hearing conference. However, when a respondent or complainant chooses to represent himself before the Commission at a public hearing, he may appear at the pre-hearing conference without counsel.

I) Attorney Preparation:

Each attorney shall completely familiarize himself 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.

J) Duty to Arrange Conference:

It shall be the duty of counsel for both complainant and respondent to arrange for the conference of attorneys at least ten (10) days in advance of the pre-hearing conference unless waived by the Hearing Officer.

K) Witnesses or Exhibits Discovered Subsequent to the Conference of Attorneys and Prior to a Pre-Hearing Conference:

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

L) Witnesses or Exhibits Discovered Subsequent to Pre-Hearing Conference:

If following the pre-hearing conference or during a 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 furnished to opposing counsel. The original of any disclosure shall be immediately filed with the Commission and shall indicate the date it was furnished to opposing counsel.

M) Additional Pre-Hearing Conference:

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

N) Pre-Hearing Statement:

The Hearing Officer shall make a written report which recites the action taken at the pre-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 admission or agreement at the pre-hearing conference. Objections to the pre-hearing statement shall be noted on the record for appeal purposes.

Rule 10

NOTICE OF PUBLIC HEARING

Section 10.1 Notice:

A) When Required:

If, pursuant to these rules, a hearing is required, the hearing date shall be set by the Chairperson, and he shall cause notice thereof to be served upon all parties.

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 failure to appear will result in an adverse Order by Default against him.

C) Time:

Notice of hearing shall be delivered or mailed in no less than forty-five (45) days prior to the date upon which the hearing is to be held.

D) Extension of Time:

Upon application the Chairperson (or the Hearing Officer if one has been appointed) may extend the date on which the hearing has been set for good cause shown. Any motion for extension of time or continuance must be made within seven (7) days prior to the Public Hearing date.

Rule 11

HEARINGS

Section 11.1 Rules of Practice Governing Hearings:

A) Who May Appear:

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.

B) Evidence:

No evidence shall be received at any hearing except upon reasonable opportunity for all parties to be present. Each complainant and respondent shall, unless excused by the Hearing Officer, be present in person at each hearing and may be represented by counsel if they desire. A corporate respondent may appear at any hearing by any duly appointed representative or by counsel.

C) Conduct of a Hearing:

The Commission shall conduct its hearings in an informal manner without resources to the technical common-law rules of evidence required in proceedings in judicial courts, and such manner of proof and introduction of evidence shall be deemed sufficient and shall govern the proof, decision, and administrative or judicial review of all questions of fact if substantial, reliable and probative evidence supports the Commission's determination. The Hearing Officer may exclude irrelevant, immaterial, or unduly repetitious evidence and shall consider only evidence introduced into the record.

D) Hearing Procedures:

1) Unless otherwise agreed to by the commissioners all public hearings shall commence at 1:00 p.m. Each party opponent, the respondent, and the complainant, shall be entitled to a total time of 2 (two) hours a piece to present their case. To be included in this 2 (two) hour time period will be opening and closing arguments, direct and cross examination, redirect and re-cross examination, etc. At the discretion of the Hearing Officer, time spent in answering Commissioners' questions and arguing procedural matters, will not be counted towards either party opponent. The Hearing Officer shall designate a timekeeper to keep time for both the respondent and the complainant. The decisions of the Hearing Officer can always extend additional time to both parties, if required as a matter of justice and fairness.

2) All parties shall submit a list of witnesses and order of their expected appearance at the start of each public hearing. All prospective witnesses available at the start of the hearing shall be sworn in as a group.

3) The Hearing Officer, at his or her discretion, shall provide periodic breaks. Immediately following the closing of the hearing, the Commissioners shall meet as a group to discuss their findings and conclusions, and if possible, render a decision.

E) Duties of the Hearing Officer:

1) The Commissioner elected as the presiding officer, shall serve for a minimum period of 2 (two) years, with the possibility of renewal. Said Hearing Officer shall not rule on any probable cause committees so as to be available for all public hearings. In the event the Hearing Officer is unable to fulfill his/her duties, the Commission chairperson shall assume the position.

2) The Hearing Officer shall have the power to administer oaths and affirmations, and 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.

F) Separation of Witnesses:

The Hearing Officer may, within his discretion or upon motion of the respondent or complainant, order the separation of witnesses.

G) Improper Conduct:

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

H) Hearings Are Public:

All hearings of the Commission under these rules shall be open to the public.

I) Continuance and Costs:

For good cause shown the Hearing Officer may in his discretion grant a continuance on the motion of either party. If a continuance on the motion of either party. 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 Hearing Officer.

J) Commission Continuance:

The Hearing Officer may at any time order a continuance upon his own motion if the interest of justice so require. Any continuance in excess of thirty (30) days must be approved by the Chairperson of the Commission. When all parties are present, such oral notice shall constitute final notice of such continued hearing.

K) Retaliatory Action:

At any hearing on a complaint evidence shall be admissible as to any retaliatory action against any person because:

- 1) He filed the complaint which is the basis for the hearing;
- 2) He testified at any hearing before the Commission in connection with such complaint; and,
- 3) He assisted the Commission in any way in connection with its investigation of the complaint.

Such evidence shall be admissible at the discretion of the Hearing Officer, whether or not the allegations of such retaliatory acts are contained in the complaint. The Hearing Officer shall give the respondent such opportunity to prepare his defense to such allegations as he deems appropriate, and for that purpose the Hearing Officer may continue such hearing. The Commission shall not adopt findings of facts, conclusions of law, and appropriate orders with respect to such evidence, so as to prevent a person from initiating a complaint or amending his complaint to include the additional charges that he has been discharged, expelled, or otherwise discriminated against because he filed a complaint with the Commission or in any way assisted the Commission in any matter under its investigation. Such retaliatory action by any person shall be viewed by the Commission as a breach of Ordinance No. 3283, which additional allegations of other discriminatory practices.

Section 11.2 Motion to Reopen Hearings:

A) Reopening Hearings:

Upon until fifteen (15) days after a hearing has been closed, but prior to a final determination, the Commission may on its own motion, or by motion of any party, reopen the proceedings to receive further evidence or argument.

Section 11.3 Briefs and Post Hearing Procedure:

A) Who May File Briefs:

Briefs shall be filed by the parties (2) two weeks prior to the commencement of the public hearing, or within such time as the Hearing 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 Hearing Officer may request the parties submit proposed findings of facts and conclusions of law, or a suggested decision to the Commission.

Rule 12

ORDERS

Section 12.1 Final Order or Determination:

A) By Who Made:

A final order or determination of the Commission shall be made by a simple majority of the Commission as defined by these rules, as evidenced by their signatures thereon.

B) Contents in General:

Every final order shall contain informal findings of fact, informal conclusions of law, and a statement of the relief granted. The informal findings of fact shall encompass the relevant facts shown by the evidence. The findings of fact made by direct statement or by reference to the particular charges in the complaint shall be sufficient as a finding of facts.

Each Commissioner who participated in the issuance of the final order or determination may write a concurring or dissenting opinion and attach it thereto.

C) Order for Affirmative Action:

If the Commission finds that a respondent has engaged in an unlawful discriminatory practice it may enter an order requiring such respondent to cease and desist from the unlawful discriminatory practice and requiring such respondent to take further affirmative action as will effectuate the purposes of Ordinance No. 3283.

Section 12.2 Enforcement of Final Order:

A) Showing for Enforcement:

If the Commission determines that the person upon whom the final order has been served is not complying or is making no effort to comply, it may obtain a decree of a court for the enforcement of such order in Circuit or Superior Court upon showing that such a person is subject to the Commission's jurisdiction and resides or transacts business within the County in which the petition for enforcement is brought.

Rule 13

JUDICIAL REVIEW

Section 13.1 Method of Filing for Review:

A) Who May Seek Review:

Any party or person aggrieved by a final order or determination made by the Commission shall be entitled to seek judicial review provided that such request is made within thirty (30) days of the date of the Commissions decision.

B) Administrative Adjudication Act:

All proceedings on judicial review of final orders of the Commission shall be governed substantially by the provisions of the Administrative Adjudication and Court Review Act, IC 1971, 4-22-1.

C) Record of Hearing:

Notwithstanding the Act referred to Section 13.1 (B), the Commission shall prepare a statement of the proceedings from the best available means in accordance with Rule 7.2 of the Indiana Rules of Appellate Procedure, and such a statement together with the notice, all pleadings, exception, motions, requests and papers filed, other than briefs or arguments of law, shall constitute the complete and exclusive record of such hearing. Any party may obtain a copy thereof at its expense. Any party requesting judicial review shall also be required to reimburse the Commission for the expense of preparation of the Commissions hearing transcript.

Rule 14

CONSTRUCTION OF THESE REGULATIONS

Section 14.1 How Construed and Partial Invalidity:

- A) Wherever the "Ordinance No. 3283" appears, it shall be specifically construed to mean the Ordinance, referred to as it may in the future be modified, altered, amended or codified.

- B) 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.