



Monroe County Human Rights Commission

Rules and Regulations

TABLE OF CONTENTS

RULE 1 - DEFINITIONS	1
Section 1.1 - Definitions	1
RULE 2 - GENERAL INFORMATION.....	9
Section 2.1 - Application of These Rules	9
Section 2.2 - Scope of Coverage	10
Section 2.3 - Adoption and Amendment.....	10
Section 2.4 - Duties of the Chairperson	10
Section 2.5 - Filing of Charges with the Commission	11
Section 2.6 - Complaints Filed with Other Agencies, State and National	12
Section 2.7 - Manner of Filing	12
Section 2.8 - Withdrawal of a Complaint	13
Section 2.9 - Filing An Answer	14
Section 2.10 - Amendments to a Complaint and Answer	14
Section 2.11 - Ruling on Pre-Hearing Motions and Petitions	15
Section 2.12 - Motion for a More Definite Statement	16
Section 2.13 - Voluntary Disqualification	16
RULE 3 - PROCESSING A COMPLAINT	17
Section 3.1 - Pre-Investigation.....	17
Section 3.2 - Investigation and Finding	17
Section 3.3 - Conciliation Conference	19
Section 3.4 - Consent Agreements.....	21
RULE 4 - DISCOVERY	22
Section 4.1 - After the Setting of a Public Hearing	22
Section 4.2 - Prior to the Setting of a Public Hearing.....	22
RULE 5 - SERVICE OF PROCESS.....	23
Section 5.1 - Filing with the Commission	23
Section 5.2 - Subpoenas	24
RULE 6 - DEFAULT.....	27
Section 6.1 - Entry	27
Section 6.2 - Order	27

Section 6.3 - Setting Aside Default.....	28
Section 6.4 - Order Against Governmental Organizations	28
RULE 7 - PARTIES.....	28
Section 7.1 - Intervention.....	28
Section 7.2 - Joinder of Persons Needed for a Just Adjudication	28
RULE 8 - PRACTICE BEFORE THE COMMISSION	28
Section 8.1 - Appearances Before the Commission.....	28
Section 8.2 - Venue.....	29
RULE 9 - PRE-HEARING CONFERENCE	29
Section 9.1 - Pre-Hearing Conference	29
RULE 10 - NOTICE OF HEARING	33
Section 10.1 - Notice.....	33
RULE 11 - HEARINGS.....	33
Section 11.1 - Rules of Practice Governing Hearings.....	33
Section 11.2 - Motion to Reopen Hearing	36
Section 11.3 - Briefs and Post Hearing Procedure.....	36
RULE 12 - ORDERS	37
Section 12.1 - Recommended Order	37
Section 12.2 - Final Order or Determination	38
Section 12.3 - Enforcement of Final Orders	39
Section 12.4 - Temporary Emergency Orders and Preliminary Hearings	40
RULE 13 - JUDICIAL REVIEW.....	42
Section 13.1 - Method of Filing for Review	42
RULE 14 - CONSTRUCTION OF THESE REGULATIONS.....	43
Section 14.1 - How Construed and Partial Invalidity	43

RULE 1
DEFINITIONS

Section 1.1 - Definitions

When used in these rules, unless the context clearly requires otherwise, definitions found in Monroe County Code Chapter 520 or as defined as follow shall be applicable to these rules.

- (A) The term "**legal department**" shall mean the Monroe County Legal Department or Monroe County Council Attorney.
- (B) The term "**familial status**" means one or more individuals (who have not obtained the age of 18 years) being domiciled with a parent or another person having legal custody of such individual(s) or the written permission of such parent or other person. The protections against discrimination on the basis of familial status also shall apply to any person who is pregnant or in the process of securing legal custody of any individual who has not attained the age of 18 years.
- (C) The term "**affirmative action**" shall mean those acts which the commission deems necessary to assure compliance with the Monroe County Human Rights Ordinance.
- (D) 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 Monroe County Code Chapter 520-2 has occurred.
- (E) The term "**presiding officer**" shall mean the chairperson of the commission or a commissioner designated by the chairperson to conduct a public hearing, to rule on all pre-

hearing motions and petitions once probable cause has been established in accordance with these rules, and to rule on the issuance or continuance of a temporary emergency order, or the commissioner appointed by the chairperson to rule on objections to a proposed consent agreement. If no commissioner is appointed by the chairperson, the chairperson shall be the “presiding officer” on all such cases.

- (F) The term "**party**" shall mean the complainant, the respondent, an intervenor, or where appropriate, the Monroe County Human Rights Commission.
- (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 federal, state or city holiday, such period will be extended to the next business day. Provided further that all periods of notice or time of 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 "**proper notice**" as used in these rules shall mean either personal hand delivery to the party's last-known address or mailing by certified mail with return receipt requested, or any other means reasonably calculated to inform the concerned parties.
- (I) The term "**conciliation conference**" shall mean a meeting between the investigating commissioner, any agents appointed by the commission (but not a commissioner), the legal department, the respondent or an agent of the respondent who is duly authorized by law or in writing to represent the respondent and the complainant or an agent of the complainant who is duly authorized by law or in writing to represent the complainant, prior to public hearing,

for the purpose of negotiating the provisions of a consent agreement.

- (J) The term "**majority of commission**" as used in these rules with reference to any orders, adoptions, consents, concurrences and rulings, shall mean a simple majority of a quorum of the commission; provided that a commissioner who has been 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 quorum in that particular instance.
- (K) The term "**order by default**" shall mean an order issued by the presiding officer, after proper notice, against a respondent or complainant who has failed to appear at a public hearing. Upon the concurrence of a majority of the commission, an order by default shall have the same scope and effect as a final order issued by the commission after a public hearing.
- (L) The term "**probable cause commissioner**" means a commissioner assigned by the commission to investigate, with the director, a complaint, and to decide if probable cause exists to believe discrimination occurred.

RULE 2

GENERAL INFORMATION

Section 2.1 - Application of These Rules

(A) Application

These rules govern procedures in administrative adjudicatory proceedings conducted before the Monroe County Human Rights Commission (MCHRC). 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. Where the rules apply, the commission may not waive or otherwise modify them except to the extent specifically provided in the Monroe County Code Chapter 520-6.

(B) Civil Rights Within Commission Jurisdiction

The civil rights within the jurisdiction of the commission shall be those guaranteed by the Monroe County Code.

Section 2.2 - Scope of Coverage

Authority Monroe County Code Chapter 520-1 established the Monroe County Human Rights Commission. That law prohibits or discourages denial of equal opportunity to individuals because of their race, religion, color, sex, national origin, ancestry, sexual orientation, gender identity or disability in the areas of education, employment, access to public accommodations and acquisition through purchase or rental of real property including but not limited to housing. That law also prohibits discrimination in housing on the basis of familial status.

Section 2.3 - Adoption and Amendment

(A) When Effective

These rules shall be adopted by a 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 immediately. Copies of these rules shall be available to the public for free at the commission's office in reasonable quantity.

(B) Authority

These rules and regulations are adopted and promulgated pursuant to the authority as set forth in Monroe County Code Chapter 520-6.

Section 2.4 – Assuming Duties of the Chairperson If Chairperson is Incapacitated

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.

Section 2.5 - Filing of Charges with the Commission

(A) Who May File

Any person claiming to be aggrieved by a discriminatory practice or act contrary to the provisions of the Monroe County Code Chapter 520-2 may make, sign and file a complaint with the commission.

(B) Commissioner Initiated or Legal department Initiated Complaint

An individual commissioner may initiate a complaint when she or he has reason to believe that an act of unlawful discrimination has been committed against a person (other than him or herself) or a class of people, in order to vindicate the public policy of the Monroe County as expressed in the Monroe County Code Chapter 520-2. The legal department also shall have this authority.

(C) Expansion of An Individual Complaint

Where a complaint is filed in accordance with these rules and the director determines that relief for more than the individual complainant is appropriate, the director may seek amendment of the complaint in the fashion as does a complainant in Section 2.10 of these rules, or the director may file a separate complaint with respect to the acts of discrimination against such other individuals. Such separate complaint may be consolidated with the original or amended complaint of the complainant for purposes of all subsequent proceedings or may be docketed separately, at the discretion of the director.

(D) Investigation in the Absence of Complaints

Investigation in the absence of complaints shall be conducted pursuant to the authority granted to the commission in the Monroe County Code Chapter 520-2, whenever it deems the publication of such results of investigation and research would tend to minimize or eliminate unlawful discrimination on the basis of race, religion, color, sex, national origin, ancestry, sexual orientation, gender identity, disability or familial status.

Section 2.6 - Complaints Filed with Other Agencies, State and National

(A) A complaint filed with the Equal Employment Opportunity Commission shall be deemed filed with the commission on the date it was received by the Equal Employment Opportunity Commission, provided the complaint conforms to the requirements of the Monroe County Code Chapter 520-3(8) and Section 1.1(E) of these rules.

(B) A complainant may not file with both the commission and the Indiana Civil Rights Commission.

Section 2.7 - 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 shall provide assistance in drafting and filing a complaint.

(B) What Constitutes Filing

The complaint shall be deemed filed as of the date of

- (i) The postmark, if the complaint 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 complaint is filed by personal delivery.

(C) Time Limit on Filing

A complaint must be filed within one hundred eighty (180) days from the date of occurrence of the alleged discriminatory practice. If the alleged discriminatory practice is of a continuing nature, one of the dates on which the alleged acts of illegal discrimination occurred must be within one hundred eighty days prior to the filing of the complaint.

Section 2.8 - Withdrawal of a Complaint

(A) Complainant's Right of Withdrawal

A complaint, or any part thereof, may be withdrawn upon written request of complainant, at the sole discretion of the complainant. If a complainant withdraws all or part of a complaint, the complainant's decision shall be binding upon the MCHRC.

(B) Commission's Right of Withdrawal

The commission may withdraw a complaint, or any part thereof, upon a failure to locate a complainant after a reasonable search. The commission also may withdraw a complaint, or any part thereof, based on its determination of the complainant's failure to pursue or cooperate in the investigation, after agreement of a quorum of the commissioners. Such withdrawal may be

effectuated after notice of proposed withdrawal is sent by certified mail to the complainant. Such notice shall state that the complainant may appeal the withdrawal by giving written reasons, satisfactory to the chairperson, for his or her failure to pursue or cooperate with the investigation. Such notice shall state that should no satisfactory response be received by the commission within thirty (30) days of the date of the letter, the complaint will be deemed withdrawn. Should certified mail not be accepted, the notice must then be sent by first-class mail; the withdrawal is effective thirty (30) days from this mailing. A withdrawal for failure to pursue may be set aside under Section 6.3.

(C) Notice of Withdrawal

All the parties shall be notified of a withdrawal.

Section 2.9 - Filing An Answer

(A) Who May Answer and Time Limits

The respondent may himself/herself, or by his/her duly authorized representative, answer the complaint. If the respondent chooses to answer, the answer shall be in writing and signed by the respondent or his/her duly authorized representative and shall be filed with the commission within twenty (20) days after service upon respondent of a copy of the complaint, or within the deadline established under Section 2.9(C).

(B) Failure to File An Answer

If respondent fails to file an answer to a complaint within twenty (20) days after service upon respondent of a copy of the complaint, or within the deadline established under Section 2.9(C), the director may deem this failure to answer an admission to the truth of the charge and proceed

pursuant to Rule 6 for an order by default.

(C) Extension of Time for Filing

Upon oral or written application, the director, for good cause shown, may extend the time within which the answer may be filed.

Section 2.10 - Amendments to a Complaint and Answer

(A) Amendment to a Complaint

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 presiding officer, at his/her discretion, may permit the complaint to be amended as justice requires.

(B) Amendment to an Answer

The respondent may amend his/her 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 presiding officer on application duly made.

(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 expressed or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendments of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after final order;

but failure to so amend shall not affect the adjudication at 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 presiding officer may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be served thereby and the objecting party fails to show that the admission of such evidence would prejudice him/her in maintaining his/her defense on the merits. The presiding officer may grant a continuance to enable the objecting party to meet such evidence.

Section 2.11 - Ruling on Pre-Hearing Motions and Petitions

Who Rules on Motions and Petitions When the complainant or the respondent files a pre-hearing motion or petition, either party may request that the probable cause commissioner hear and rule on the motion or petition. The probable cause commissioner, may at his/her discretion rule on the motion or petition or request the commission to rule on any pre-hearing motion or petition.

Section 2.12 - Motion for a More Definite Statement

(A) Who May File

Any person named as a respondent by the complainant may file a motion in writing within ten (10) days after service thereof requesting the allegations in the complaint be made more definite and certain. Such motion shall point out the deficiencies complained of and the details desired. The legal department shall rule on the motion, and if the motion is granted, shall fix the time within which the complainant shall comply.

(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/her defense to the allegations raised in the complaint.

Section 2.13 - Voluntary Disqualification

How to Disqualify 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, or otherwise feels she or he could not be objective and impartial, the commissioner shall disqualify himself/herself from any participation by submitting a written document to the chairperson designating the kind and extent of his/her interest in that particular case.

RULE 3

PROCESSING A COMPLAINT

Section 3.1 - Pre-Investigation

(A) Docketing of Charge

Each complaint shall be given a docket 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, pursuant to Rule 1.1

(V) of these rules.

Section 3.2 - Investigation and Finding

(A) Investigation of Complaint

After the legal department receives a verified complaint of discrimination filed with the Monroe County Human Rights Commission, he/she shall notify the probable cause commissioner of his/her assignment to this case. Commissioners shall be assigned to serve as probable cause commissioners on a rotating basis. The commissioner assigned as a probable cause commissioner on a complaint is prohibited from discussing the facts of the complaint with any other commissioner and is disqualified from hearing or deciding any other matters relating to the complaint. The probable cause commissioner may meet with the legal department and the complainant(s) as soon as possible after the response to the complaint is filed to formulate an investigative plan and participate and assist in the investigation of the allegations of the complaint and the response. The legal department may submit a recommended finding of the case to the probable cause commissioner which sets forth the relevant facts and applicable legal standards. After the investigation, the probable cause commissioner shall make the final determination of probable cause. This determination shall be

based upon the applicable legal standards as set forth in the legal departments' recommendation and upon all of the evidence, both written and oral.

(B) Finding of Probable Cause

If the probable cause commissioner decides in favor of a finding of probable cause, the complainant and the respondent shall be sent, by proper notice, a copy of that ruling and proposed consent agreement. The respondent shall be notified of his or her right to agree to the terms of the proposed consent agreement as written, to request a conciliation conference or to have a public hearing, as provided for in Section 3.3(A).

(C) Finding of No Probable Cause

If the probable cause commissioner decides in favor of a finding of no probable cause, proper notice of such a ruling shall be sent to the complainant and respondent.

(D) Appeal of a No Probable Cause Finding

A party who believes himself/herself to be aggrieved by a finding of no probable cause may file, within ten (10) days after receipt by proper notice of such finding, a written request for reconsideration of such finding with reasons therefore, with the chairperson of the commission. If the chairperson acted as the probable cause commissioner, then the request shall be filed with the vice chairperson. The chairperson (or vice chairperson) shall act as the appeal officer. Notice of such right to request reconsideration shall be contained in the notice of the finding of no probable cause provided for by section 3.2(C). The appeal officer shall review and rule, or shall designate a commissioner to review and rule, on such request. The appeal officer shall schedule a meeting to be attended by the appeal officer, the director, the probable cause commissioner and the complainant, and proper notice of the date, time and place of such meeting shall be sent to parties, including the

respondent. The appeal officer shall base his/her decision on the investigation results submitted to him/her by the director and the probable cause commissioner, and the complainant's arguments presented to him/her at the meeting.

- (i) If the appeal officer determines that the finding of no probable cause should be reversed, the case shall be processed as though an original finding of probable cause had been made, pursuant to these rules.
- (ii) If the appeal officer determines that the original finding of no probable cause should be upheld, the complaint shall be dismissed.
- (iii) Complainant and respondent shall be sent by proper notice the appeal officer's determination reversing or upholding the original finding of no probable cause, within twenty (20) business days of the meeting, unless a written extension of time is granted by all parties.
- (iv) No appeal officer ruling on an appeal of a no probable cause finding shall participate any further in the processing of the complaint, except as a witness at a public hearing on the complaint.

Section 3.3 - Conciliation Conference

(A) Notice to Respondent

Along with the probable cause finding, the legal department shall send the following information to the respondent by proper notice:

- (1) A proposed consent agreement.
- (2) Notice that respondent must choose one of the following three options:
 - (a) Sign the consent agreement and thus terminate the proceeding, subject to the

approval of a majority of the commission and full performance of respondent's and complainant's parts of the agreement.

(b) Request in writing and within seven (7) days of receipt of the consent agreement, a conciliation conference to be scheduled to negotiate differences regarding provisions in the consent agreement.

(c) Reject in writing the legal department's efforts at conciliation within seven (7) days after receipt of the consent agreement, at which time the legal department shall consider his/her obligations to make a reasonable effort to conciliate all the issues in the complaint at an end, and shall schedule a public hearing.

(3) In the event that the respondent fails to respond by the deadline, the executive director will make a reasonable effort to contact the respondent and attempt to clarify which of the three options described above the respondent has chosen. If such efforts are unsuccessful, the legal department shall consider his/her efforts to make a reasonable effort to conciliate all the issues in the complaint at an end, and shall schedule a public hearing.

(B) Assignment of Conciliators

When the legal department receives written notice pursuant to Section 3.3 (A)(2)(b) that respondent has requested a conciliation conference, the legal department and probable cause commissioner shall conduct the conference along with any agents the legal department appoints to assist.

(C) Conduct of Conciliation Conference

At the conciliation conference, the legal department shall attempt to negotiate all differences

regarding provisions in the consent agreement. The respondent and the complainant may represent themselves or be represented by their attorney. All discussion in conciliation conferences shall be confidential. No admissions made against interest during the conciliation conference may be introduced as evidence at a public hearing held by the commission or at any other legal proceeding, unless waived by written consent of both respondent and complainant.

Section 3.4 - Consent Agreements

(A) Unsuccessful Conciliation

1. If the respondent does not agree to the terms of a consent agreement, either within seven (7) days of receipt of the consent agreement or at a conciliation conference, the complaint shall proceed in accordance with these rules toward the holding of a public hearing on the complaint.
2. If the legal department and the respondent agree on the terms of a consent agreement, the complainant shall be given proper notice of the consent agreement and his/her options to either sign the consent agreement (in which case it will be submitted to the commission for its approval pursuant to Section 3.4(C)) or file written objections with the legal department within seven (7) days of such notice. If the complainant files written objections, the legal department will notify the respondent and continue efforts towards conciliation.

(B) Successful Conciliation

If the terms which are reached at the conciliation conference 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 commission as provided in Section 3.4(C).

(C) Execution of Consent Agreement

Upon approval of the consent agreement by a majority of the commission, whose consent shall be evidenced by their signatures thereon, the consent agreement shall become effective. If a majority of the commission refuses to approve of the consent agreement, it shall be of no effect and the commission shall order either a public hearing on the complaint or order the legal department to resume negotiations pursuant to these rules, at the commission's discretion. Upon approval by the commission, 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.

Attached as Appendix A is a flow chart to illustrate the investigative process.

RULE 4

DISCOVERY

Section 4.1 - Prior to the Setting of a Public Hearing

Prior to the setting of a public hearing before the Monroe County Human Rights Commission, 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 a commissioner appointed by the chairperson shall issue all protective and enforcement orders as needed. If a party or a witness does not comply with a protective or enforcement order of the chairperson (or the commissioner appointed by the chairperson), the commission may seek enforcement of such order in the Monroe County Circuit Court.

Section 4.2 - After the Setting of a Public Hearing

Whenever a public hearing before the Monroe County Human Rights Commission is set as provided by these rules, parties shall be entitled to all discovery provisions of Rules 26 through 37 of the Indiana Rules of Trial Procedure. Protective and enforcement orders, if required, shall be issued by the presiding officer, at the officer's sole discretion. If a party or witness does not comply with a protective or enforcement order of the presiding officer, the commission may obtain a decree of court for the enforcement of such order in the Monroe County Circuit Court.

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 Section 2.7. All other pleadings, motions, petitions, requests and other instruments shall be filed with the commission by delivery in person to the commission office in Bloomington 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 by his/her attorney and shall show the party's address and phone number and the address and phone number of his/her 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(A), 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) calendar 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. When appropriate, the director may prepare a motion for the moving party to review and sign, based on the party's oral statement.

Section 5.2 - Subpoenas

(A) Issuance

The Monroe County Human Rights Commission may issue subpoenas on its own motion and may issue subpoenas to any party upon request, at its discretion.

(B) Service of Subpoenas

A subpoena issued by the Monroe County Human Rights Commission may be served on a party or any other person. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person 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; or
- (2) Delivering a copy of the subpoena personally; or
- (3) Leaving a copy of the subpoena at his/her dwelling house or usual place of abode; or

- (4) Serving his/her agent as provided by rule, statute or valid agreement.

Whenever service is made under subsection (3) or (4), the person making the service also shall 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 Subpoenas

Subpoenas issued by the commission shall be signed by the legal department and/or the probable cause commissioner; subpoenas 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. Subpoenas shall state, as specifically as possible, the nature of the testimony or information sought, and shall be as narrowly tailored as possible, consistent with conducting a thorough investigation.

(D) 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.

(E) 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.

(F) Quashing or Modifying Subpoena

The chairperson or vice chairperson, or if both are unavailable, any commissioner, or if a presiding officer has been appointed by the chairperson, the presiding officer, upon motion made promptly may:

- (i) Quash or modify the subpoena if it is unreasonable or oppressive; or

- (ii) 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, and/or tangible information.

(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 his/her 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 breach of the Monroe County Code Chapter 520-2, and such person shall be liable to a penalty, if so adjudged by the Monroe County Circuit Court, not to exceed three hundred dollars (\$300.00). Each penalty shall be deposited in the general fund of the Monroe County. The payment of such a penalty by a party shall not impair the commission's ability to grant affirmative relief and compensatory damages to the complainant if justice so requires.

(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.

RULE 6
DEFAULT

Section 6.1 - 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 proper notice, and that fact is established by affidavit or otherwise, the party may be defaulted.

Section 6.2 - Order

(A) Failure to Answer a Complaint

The complainant may file a motion with the commission for an order of default in cases where the respondent has failed to answer the complaint within the time allowed by these rules.

(B) Failure to Appear at Public Hearing

Either party may apply to the commission for an order of default in cases when, after proper notice, the other party has failed to appear at a public hearing.

(C) Supplemental Hearing

If, in order to enable the commission to enter an order of 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.

(D) 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 last-known 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 of default to be entered into against such non-answering respondent or non-appearing party.

Section 6.3 - Setting Aside Default

Upon application with a reasonable time and upon good cause shown, the chairperson of the commission may set aside an order of default or a withdrawal for failure to pursue.

Section 6.4 - Order Against Governmental Organizations

An order of default may be entered against a governmental organization.

RULE 7

PARTIES

Section 7.1 - Intervention

Who May Intervene Any person not initially joined in the action or proceeding may be permitted to petition for intervention upon the filing of a motion which sets forth the grounds for the intervention. The presiding officer has the discretion to grant or deny the petition.

Section 7.2 - Joinder of Persons Needed for a Just Adjudication

Joinder The Commission adopts Rule 19(A) and (B) of the Indiana Rules of Trial Procedure, substituting "presiding officer" for "court," substituting "final order" for "judgment," substituting "complainant" for "plaintiff" and omitting the last sentence of (A). These rules explain when and how a party may be joined when required by fairness to all parties.

RULE 8

PRACTICE BEFORE THE COMMISSION

Section 8.1 - Appearances Before the Commission

(A) Who May Appear for an Individual

Any person may appear before the Monroe County Human Rights Commission on his/her own behalf; or may be represented by an attorney admitted to practice and in good standing before the bar of any of the United States or District of Columbia; or may be represented by a law student participating in an approved clinical program who is certified to practice law by the Indiana Supreme Court, under the supervision of the clinic attorney.

(B) Who May Appear for the Complainant

The case in support of the complainant may be presented before the commission or presiding officer, by the complainant representing himself/herself; or by an attorney admitted to practice and in good standing before the bar of any of the United States or District of Columbia; or by a law student participating in an approved clinical program who is certified to practice law by the Indiana Supreme Court, under the supervision of the clinic attorney.

Section 8.2 - Venue

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 Monroe County 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 presiding officer in his/her discretion, or upon motion of any party, may direct the parties or their attorneys 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 and/or of documents which will avoid unnecessary proof;
- (iv) a limitation of the number of expert witnesses;
- (v) an exchange of names of witnesses to be called during the trial and the general nature of their expected testimony; or
- (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-hearing conference shall not be called until after conciliation has been attempted and has 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-hearing conference. However, when a respondent or complainant chooses to represent himself/herself before the commission at a public hearing, he/she may appear at the pre-

hearing conference without counsel.

(D) Conference of Attorneys

Unless otherwise ordered by the presiding officer, attorneys for each of the parties (or, if the party is not represented by counsel, the party himself/herself) shall meet and confer at least three (3) days prior to the pre-hearing conference, for the following purposes:

- (i) Each attorney shall mark for identification and provide opposing counsel an opportunity to inspect and copy all exhibits which he/she 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 also must 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.
- (ii) The commission adopts Rule 16(C) 2-5, inclusive, of the Indiana Rules of Trial Procedure, substituting "presiding officer" for "court" and substituting "hearing" for "trial." These rules discuss orders for simplifying the issues, amending the pleadings, obtaining admissions of facts and documents, limiting expert witnesses, and other areas necessary to facilitate a hearing.

(E) Attorney Preparation

The commission adopts Rule 16(D) of the Indiana Rules of Trial Procedure, which provides that attorneys must be familiar with the case before the pre-hearing conference and prepared to enter into as many stipulations as possible.

(F) 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 presiding officer.

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

The commission adopts Rule 16(G) of the Indiana Rules of Trial Procedure, substituting "hearing" for "trial" and substituting "presiding officer" for "court." Rule 16 (G) requires that attorneys disclose witnesses or exhibits discovered after the attorney conference to opposing counsel immediately.

(H) Witness or Exhibits Discovered Subsequent to Pre-Hearing Conference

The commission adopts Rule 16(I) of the Indiana Rules of Trial Procedure, substituting "hearing" for "trial" and substituting "commission" for "court." Rule 16 (I) requires that attorneys disclose witnesses or exhibits discovered after the pre-hearing conference or during the hearing to opposing counsel immediately.

(I) Additional Pre-Hearing Conferences

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

(J) Pre-Hearing Statement

The presiding officer shall make a written report which summarizes the action taken at the pre-hearing conference and the amendments made by the parties as to any of the matters considered which limit the issues before the full 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 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/she shall cause notice thereof to be served upon all parties.

(B) Contents of Notices

All notices of hearing shall state the date, time and place of 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 may result in an adverse order of default against him/her.

(C) Time

Notice of hearing shall be delivered, faxed, mailed or e-mailed no fewer 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 the presiding officer if one has been appointed) may extend the date on which the hearing has been set for good cause shown.

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 may be represented 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 in person or by counsel. 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 recourse 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 presiding officer may exclude irrelevant, immaterial or unduly repetitious evidence and shall consider only evidence introduced into the record.

(D) Duties of the Presiding Officer

The commissioner presiding at the hearing 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.

(E) Separation of Witnesses

The presiding officer may, upon his/her discretion or upon motion of the respondent or complainant, order the separation of witnesses.

(F) Improper Conduct

The presiding officer may exclude from the hearing room or from further participation in the proceeding, any person who engages in improper conduct before him/her except a party, his/her attorney, or a witness engaged in testifying. If a party, a party's attorney or a testifying witness engages in improper action, the presiding officer may take appropriate action as justice requires. Improper conduct shall consist of action which severely impedes or makes impossible an orderly administrative adjudication.

(G) Hearings are Public

All hearings of the commission under these rules shall be open to the public if required by state or other applicable law.

(H) Continuance and Costs

For good cause shown, the presiding officer may in his/her discretion grant 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 presiding officer.

(I) Commission Continuance

The presiding officer may at any time order a continuance upon his/her own motion if the interests 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.

(J) Retaliatory Action

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

- (i) he/she filed the complaint which is the basis for the hearing;
- (ii) he/she testified at any hearing before the commission in connection with such complaint; or
- (iii) he/she assisted the commission in any way in connection with its investigation of the complaint.

Such evidence shall be admissible at the discretion of the presiding officer, whether or not allegations of such retaliatory acts are contained in the complaint. The presiding officer shall give the respondent an opportunity to prepare his/her defense to such allegations as he/she deems appropriate, and for that purpose the presiding officer may continue such hearing. The commission shall adopt appropriate findings of facts, conclusions of law, and orders with respect to such evidence, provided that nothing in these rules shall be construed so as to prevent a person from initiating a complaint or amending his/her complaint to include the additional charges that he/she has been discharged, expelled or otherwise discriminated against or retaliated against because he/she filed a complaint with the commission or testified at any hearing before 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 the Monroe County Code Chapter 520-2, which breach shall be a separate and independent basis for a complaint and which shall not prejudice or be prejudiced by additional allegations of other discriminatory practices.

Section 11.2 - Motion to Reopen Hearing

Reopening Hearings At any time after a hearing has been closed, but before 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, upon good cause shown and at the commission's discretion.

Section 11.3 - Briefs and Post 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 presiding officer shall designate. Failure to file a brief shall in no way prejudice the rights of any party.

(B) At the Close of Hearing

At the close of the public hearing the presiding officer may request the parties to submit a suggested decision to the commission. A suggested decision shall include suggested findings of fact, conclusions of law, and the final order by the commission which the party desires.

RULE 12

ORDERS

Section 12.1 - Recommended Order

(A) Recommended Findings of Fact, Conclusions of Law, and Orders of the Commissioners

When a hearing is conducted by less than a majority of the commission, as defined by these rules, it shall be conducted in the same manner provided for a public hearing before a majority of the commission, except that instead of making an order or determination the commissioner or commissioners conducting the hearing shall make a recommendation as to the order to be made by the commission. Such recommendation shall be in writing and shall be presented to and filed with the commission together with the 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 hearing. The commission shall consider the recommendation and issue a decision at a public meeting.

(B) Appeal from Recommendation

Any affected person may, within ten (10) days after receipt of such notice, file his/her objections to the entry of such recommended order. If objections are filed, the commission shall set the same for hearing. Such hearing shall be on the record filed with the commission by the presiding officer. However, any party may cause a transcript of the oral testimony to be made at his/her expense and cause it to be filed with the commission, whereupon it will become part of the record so filed. The commission may hear additional evidence or refer the matter back to the commissioner or commissioners who conducted the hearing to hear additional evidence. After such hearing the commission may adopt the recommendation, may amend or modify it, or may make such order or

determination as is proper on the record. If no objections are filed, the commission may adopt the recommended order or determination without further hearing. If the commission does not adopt such recommended order or determination where no objections are filed, the chairperson shall set the matter for hearing, notify the parties, and proceed as though objections had been filed to the recommended order or determination. Notice of all final orders and determinations shall be given promptly to all parties to the proceedings.

Section 12.2 - Final Order or Determination

(A) By Whom Made

A final order or determination of the commission shall be made by a majority of the commission, as defined in Section 1.1(X), as evidenced by their signatures thereon.

(B) Contents in General

Every final order shall contain findings of fact, conclusions of law, and a statement of the relief granted. The findings of fact shall encompass the relevant facts shown by the evidence. The findings of fact may be made by direct statement or by reference to the particular charges in the complaint. A reference to the particular charges in the complaint shall be sufficient as a findings of fact. Each commissioner who participated in the issuance of the final order or determination may write a concurring or dissenting opinion and attach it to the final order.

(C) Order for Affirmative Action

If the commission finds that a respondent has engaged in an unlawful discriminatory practice, it may cause to be served on such respondent an order requiring such respondent to cease and desist from the unlawful discriminatory practice and requiring such respondent to take further specified affirmative action as will effectuate the purposes of the Monroe County Code Chapter 520-7.

(D) Damages

Pursuant to I.C. 22-9-1-12.1 and its subsequent legal interpretation by the judicial branch of the State of Indiana and/or the judicial branch of the United States of America, and pursuant to Chapter 520-3 (6) of the Monroe County Code, the commission may order compensation to be made to persons harmed by the commission of a discriminatory practice, after a public hearing as provided for in these rules and regulations. Such orders for money damages shall be appropriate and binding upon respondents who have harmed persons by committing discriminatory practices, and such orders for money damages may compensate persons harmed by the discriminatory practice for such persons' direct losses of money and for money such persons would have been entitled to absent respondent's commission of a discriminatory practice.

Section 12.3 - Enforcement of Final Orders

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 court upon 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.

Section 12.4 - Temporary Emergency Orders and Preliminary Hearings

(A) Who Issues

The chairperson of the commission, or a commissioner appointed by the chairperson, may act as a hearing officer to rule on the continuance of a temporary emergency order. The hearing officer shall not be eligible to take part in any further proceedings on the complaint. The same commissioner shall rule on both the issuance and continuance of a temporary emergency order whenever possible.

(B) Notice

A temporary emergency order may be granted without written or oral notice to the adverse party or his/her attorney only if

- (i) It clearly appears from specific facts shown by affidavit or by the verified complaint that irreparable loss to the complainant's remedy will result before the adverse party can be heard in opposition; and
- (ii) The legal department certifies in writing the efforts made to give notice to respondent or his/her attorney and the reasons supporting his/her claim that notice should not be required.

(C) Contents

Every temporary emergency order granted by the hearing officer shall specify the date and hour of issuance, shall describe the injury and why it is irreparable, if the order was issued without notice why it was so issued, and that it shall expire within ten (10) days. Every temporary emergency order shall become part of the permanent record of the case. Each temporary emergency order also shall describe in reasonable detail the acts sought to be restrained and indicate that it is binding only upon the respondent and persons in active concert or participation with him/her.

(D) Continuance

Subsequent to the issuance of a temporary emergency order, the hearing officer shall cause to be issued by proper notice to the parties the date, time and place of a preliminary hearing. Such hearing shall be held as expeditiously as the ends of justice require, but never without proper notice to the parties. The date set for the preliminary hearing always shall be within ten (10) days of the issuance of a temporary emergency order unless a clear case of good cause is made out by the complainant or

upon motion of respondent. In such cases, temporary emergency orders shall remain in effect beyond the ten (10) day period until a preliminary hearing may be held. At a preliminary hearing, the hearing officer shall determine whether or not to continue the effect of the temporary emergency order pending a final resolution of the complaint under these rules. The hearing officer also may modify the effect of the temporary emergency order as the ends of justice require. The determination of a hearing officer at a preliminary hearing shall be sent by proper notice to the parties and made a part of the permanent record of the case. The hearing officer's determination shall state the reasons for the continuance of the temporary emergency order.

(E) Standards for Issuance and Continuance

When issuing a temporary emergency order, the hearing officer shall consider the effect upon the complainant's potential remedy if such order is not issued and the hardship to the respondent in complying with such order. When determining whether or not to continue the temporary emergency order intact or as modified at a preliminary hearing, the hearing officer shall balance the equities of the respective parties and shall not continue such orders except for good cause shown, but shall not require the complainant to prove facts necessary for a successful adjudication of the complaint before issuing such a continuance of the temporary emergency order.

(F) Enforcement

Refusal to obey the issuance or continuance of a temporary emergency order shall be a breach of the Monroe County Code Chapter 520-2 and such breaching party shall be liable to a penalty of not more than three hundred dollars (\$300.00), if adjudged by the Circuit Court of Monroe County. Each penalty shall be deposited in the general fund of the Monroe County. The payment of such a penalty shall not impair the commission's ability to grant affirmative relief and compensatory damages to the

complainant, should justice so require.

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 a majority of the commission shall be entitled to a judicial review.

(B) Administrative Orders and Procedures Act

All proceedings on judicial review of final orders of the commission shall be governed substantially by the provisions of the Administrative Orders and Procedures Act, I.C. 4-21.5-1-1 et seq. This statute explains who may initiate judicial review, how to initiate the review, venue requirements, bond requirements and related issues.

(C) Record of Hearing

Notwithstanding the Act referred to in Section 13.1(B), upon written request of a party, the commission shall prepare a statement of the proceedings from the best available means in accordance with Rule 27 of the Indiana Rules of Appellate Procedure, and such a statement, together with the notice, all pleadings, exceptions, 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 of the record at its expense. Rule 27 provides a definition of “record on appeal.”

RULE 14

CONSTRUCTION OF THESE REGULATIONS

Section 14.1 - How Construed and Partial Invalidity

(A) Broad Construction

These regulations and rules shall be liberally construed to accomplish the purpose of the Monroe County Code Chapter 520-2 and the policies of the commission.

(B) Specific Construction

Whenever the words “Monroe County Code Chapter 520-2” appear, they shall be specifically construed to mean that chapter of the Monroe County Code referred to as it may in the future be modified, altered, amended or codified.

(C) 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.

The Monroe County Human Rights Commission hereby adopts said proposed amendments, as modified, as the official rules and regulations of the Monroe County Human Rights Commission. Evidence of such adoption shall be the signatures of a majority of the commission herein.

So approved this 11th day of May, 2011.

Kristina Simmonds
Chairperson

R. Earl Reagan II
Vice Chairperson

Secretary

Bryon Bangert
Commissioner

Carolyn Williams
Commissioner

Commissioner

Birk Billingsley
Commissioner