

1 BEFORE THE STATE OF INDIANA

2 CIVIL RIGHTS COMMISSION

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5

PUBLIC MEETING OF JUNE 16, 2023

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PROCEEDINGS

10 in the above-captioned matter, before the Indiana

11 Civil Rights Commission, Adrienne L. Slash,

12 Chairperson, taken before me, Lindy L. Meyer,

13 Jr., a Notary Public in and for the State of

14 Indiana, County of Shelby, at the Indiana

15 Government Center North, 100 North Senate Avenue,

16 Room N300, Indianapolis, Indiana, on Friday,

17 June 16, 2023 at 1:16 o'clock p.m.

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1 APPEARANCES:

2 COMMISSION MEMBERS:

3 Adrienne L. Slash, Chairperson
Sue Silberberg

4 Steven A. Ramos
Holli Harrington

5 James W. Jackson
Terry Tolliver

6

7 INDIANA CIVIL RIGHTS COMMISSION

By Gregory Wilson, Director

8 & David Fleischhacker, Deputy Director

Indiana Government Center North

9 100 North Senate Avenue, Room N300

Indianapolis, Indiana 46204

10 On behalf of the Commission.

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OTHER COMMISSION STAFF PRESENT:

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Michael Lostutter

13 Christiana Afuwape

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1 1:16 o'clock p.m.
2 June 16, 2023

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4 CHAIRPERSON SLASH: It's 1:15 p.m. on
5 Friday, June 16th. We'll call the June meeting
6 of the Indiana Civil Rights Commission to order.
7 And we don't have anyone on camera, so we
8 shouldn't have to call the roll for anything
9 today. It's kind of awesome. All right.
10 Fantastic. So, we can --

11 MR. LOSTUTTER: All right.

12 Please be advised no party will be allowed
13 to speak directly to the Commission during any
14 Commission meeting, except during a previously
15 scheduled oral argument. The Commissioners will
16 make their initial determination based on the
17 complaint, the notice of finding, the appeal, and
18 the final investigative report. You must not
19 address the Commission members except and unless
20 you are addressed by them directly, and if you
21 have any questions about your case, please wait
22 to speak to the Docket Clerk until after the
23 Commission meeting.

24 Thank you.

1 CHAIRPERSON SLASH: All right. We
2 have our quorum, so we're good to begin. We've
3 established it. You can go ahead and announce
4 the agenda, and then we'll get started.

5 MR. LOSTUTTER: We will approve of
6 the previous meeting minutes; we'll then have the
7 ICRC Director's Report; we will have Old
8 Business, cases that were assigned last month, of
9 which there would have been five that we have;
10 and then the new cases will be assigned; we have
11 two motions that are before the Chair to be
12 considered; we have one Review of ALJ Decisions
13 and Orders that will need to be voted on; we have
14 no Decisions, Final Orders that were
15 Automatically Confirmed to read into the record.

16 That's what we have to look forward to.

17 CHAIRPERSON SLASH: Thank you.

18 So, our first item that we have is --

19 MR. FLEISCHHACKER: Chair Slash,
20 point of order.

21 CHAIRPERSON SLASH: Uh-huh.

22 MR. FLEISCHHACKER: Could we just do
23 a roll call for the record, just to get it on

1 record who is all present for the Commission --

2 CHAIRPERSON SLASH: Yes.

3 MR. FLEISCHHACKER: -- for a quorum?

4 Okay.

5 MR. LOSTUTTER: Comm. Silberberg?

6 COMM. SILBERBERG: Here.

7 MR. LOSTUTTER: Comm. Harrington?

8 COMM. HARRINGTON: Here.

9 MR. LOSTUTTER: Comm. Jackson?

10 COMM. JACKSON: Here.

11 MR. LOSTUTTER: Comm. Tolliver?

12 COMM. TOLLIVER: Here.

13 MR. LOSTUTTER: Vice-Chair Ramos?

14 VICE-CHAIR RAMOS: Here.

15 MR. LOSTUTTER: Chair Slash?

16 CHAIRPERSON SLASH: Here.

17 MR. LOSTUTTER: Quorum established.

18 CHAIRPERSON SLASH: Okay. Fantastic.

19 So, the first item that we have, is there

20 a motion for the approval of last month's meeting

21 minutes?

22 VICE-CHAIR RAMOS: So, moved.

23 CHAIRPERSON SLASH: Thank you.

1 Is there a second?

2 COMM. JACKSON: Second.

3 CHAIRPERSON SLASH: All right.

4 All in favor?

5 COMM. SILBERBERG: Aye.

6 COMM. HARRINGTON: Aye.

7 VICE-CHAIR RAMOS: Aye.

8 COMM. JACKSON: Aye.

9 COMM. TOLLIVER: Aye.

10 CHAIRPERSON SLASH: Aye. All right.

11 MR. LOSTUTTER: I think the ayes have
12 it.

13 CHAIRPERSON SLASH: All right.

14 Fantastic. No rolls necessary.

15 COMM. HARRINGTON: For so long.

16 CHAIRPERSON SLASH: Okay. So, we'll
17 have the ICRC Director's Report.

18 MR. WILSON: Thank you, Chair Slash.

19 Thank you again, Commissioners.

20 We're just excited again, and I'll let

21 David get into the details of the report, but I

22 just want to say the big thing for us is the

23 conference that's next week, and I want to thank

1 all of the Commissioners, those definitely who've
2 supported us, like Comm. Harrington and the
3 Airport have been very supportive of this
4 conference and helped us in so many ways.

5 So, thank you, and to others that are
6 going to be attending and supporting us. I think
7 it's a great opportunity for us, again, to
8 showcase our Civil Rights agency here in Indiana.
9 The fact is that we have, I think, about 20-plus
10 different cities that are attending, whether it's
11 physically or through the hybrid link.

12 We also have probably about seven or eight
13 other states that are participating. We'll have
14 a map that we're doing to show all of the
15 different states that are participating, and
16 we're excited about that. Not only are they
17 participating in the registration, but also doing
18 presentations and various workshops, and so,
19 that's exciting as well.

20 And the fact that we were able to get the
21 Deputy Secretary -- if the Secretary hadn't had a
22 previous engagement, they would have come, but we
23 were able to get the Deputy Secretary. That's a

1 big deal in our region, because most of the civil
2 rights agencies in this region don't have
3 conferences, they don't do this.

4 So, we at the agency think big, and it's a
5 lot of hard work and we have a great team, but we
6 try to put something on to educate people about,
7 you know, social issues related to
8 discrimination. And again, while we are a
9 fact-finding agency, but we know through
10 education people will learn and understand
11 discrimination and what it looks like sometimes
12 when they don't understand, or some of those
13 biases that people do have.

14 So, we're excited that Bernie Kleina,
15 again, as I told you before, is going to be here.
16 We were on the radio the other day, Saturday,
17 on 1310, and he got to talk a little about his
18 background and, you know, having all of these
19 various photos of Dr. Martin Luther King in
20 color, which he's bringing that. He'll have an
21 exhibit here where we'll be showcasing a lot of
22 his photos.

23 The other thing -- two things I really

1 like is that we're going to be doing testing --
2 we're going to do a testing workshop, because
3 we're really good at it. We've been very
4 successful with our testing program, and then the
5 fact that HUD signed a five-year agreement with
6 us to help fund continuing testing, so -- and
7 then HUD, with their dollars this year, we hope
8 they're going to continue to support it.

9 But one of the things we're doing is we're
10 looking at -- you know, we know that people who
11 have been incarcerated have problems when they
12 get out with housing, and so, one of our testing
13 programs is looking at that, and that looks at
14 sometimes the policies and things that create
15 those barriers. So, we'll be doing some
16 workshops on that as well, and that's something
17 that HUD is pushing.

18 So, this month we're pretty busy. Like I
19 said, the conference next week. This Saturday
20 will be a Juneteenth celebration in Kokomo, we're
21 having a booth set up. And so, the team is very
22 busy, because we're going to go right into the
23 conference Monday, Tuesday, Wednesday.

1 But then as soon as we come out, even all
2 next week is Negro League Night at Victory Field,
3 where there'll be videos, in our agreement, all
4 week long related to this agency, and then
5 Saturday, that's our Civil Rights Night, we'll be
6 there as well, then we go right into July, which
7 is Expo. And so, we have a busy time here at the
8 agency.

9 So, we appreciate your support, and I'm
10 going to leave, because I have a meeting where
11 we're trying to count up everything and make sure
12 we've got all of our i's dotted and t's crossed.
13 So, any questions of me? And then David will
14 present the rest.

15 COMM. HARRINGTON: Well, good luck on
16 the conference.

17 MR. WILSON: Thank you so much. And
18 I look forward to seeing everybody there.

19 Thank you, David.

20 MR. FLEISCHHACKER: All right. Now
21 to get into the weeds, I suppose. So, beyond the
22 events, honestly, we have a whole bunch of other
23 stuff that continues to go on, on kind of the

2 system, we're still achieving a 94-plus-percent
3 answer rate in the month of May, so our goal is
4 to be around 95 percent, so we're right there.

5 CMS continues -- our Case Management
6 System continues to get enhancements, so we're
7 hoping to have that in a much better position to
8 meet our needs as far as generating reports and
9 doing other thing that we need for our Case
10 Management System.

11 Greg mentioned like we're doing a session
12 on fair housing testing. We do have that going
13 on right now. Just this week we filed ten
14 Director-initiated complaints based on results of
15 those testings, so those are going to get some
16 continued investigation, and then move on to
17 either hopefully, you know get settled or
18 potentially on to litigation.

19 We did settle a Director-initiated
20 complaint earlier this month or the end of last
21 month, but it was one that had been forwarded to
22 us from IHCDA, the Indiana Housing and Community
23 Development Authority. They had -- they do

1 regular audits of their properties, and in one of

2 those audits they found a policy that had some
3 concerning statements in it.
4 So, they sent that over to us for review.
5 We ended up doing a Director-initiated complaint.
6 We ended up settling with the property manager,
7 and they agreed to modify their policy for that
8 property, but they also managed that and used
9 that policy for a number of other properties.

10 So, part of that was to get them to change that
11 policy for all of those properties.

12 And they agreed to pay us -- pay the
13 Commission \$5,000 for administrative costs and
14 that kind of stuff, too. So, we're hoping to
15 maybe use that as a model for future mediations
16 and settlements for entities that we initiate
17 Director-initiated complaints against.

18 And then we're 14 days away from the end
19 of our current HUD contract period, so our REPACE
20 Team and Christiana's Intake Team are frantically
21 closing out housing cases so that we can get them
22 included for our current HUD contract period.
23 We're not going to get to the same level as we

1 were last year, but we're not going to be too far
2 off from it. Last year we had a really good

3 year, and that included some residual testing
4 cases that had gone on that were in that period.

5 Our current testing, those cases are going
6 to end up being in next year's contract period,
7 so we'll still get those, but they're just -- we
8 didn't get a bump from them this year like we did
9 last year. So -- but we're going to be close. I
10 think we're going to be in the low 150's, and
11 last year we were in the low 160's, so not too
12 awful far off from where we were.

13 And then September, the end of September,
14 is when the EEOC contract period runs, and we're
15 on track to meet our contract for that. In fact,
16 we have enough inventory in our Employment
17 Investigation Team to not only close out this
18 contract period, but if all -- once all of those
19 cases get closed out, that essentially is enough
20 to close out our contract period for next year.

21 We have over 400 cases right now in our
22 employment area that are being investigated, so
23 our Employment Team and the Intake Team that

1 supports those cases, getting them there and
2 closing, is -- are kept very busy right now with

3 those employment cases. That's where a good
4 chunk of our work is, and we're trying to bring
5 on some additional staff to spread the burden for
6 those employment cases.

7 VICE-CHAIR RAMOS: Is that -- are
8 those contracts -- contracts short term, or
9 that's for the long haul and anticipating
10 continued growth?

11 MR. FLEISCHHACKER: Our contract
12 employees, just based on how budget stuff goes,
13 we say they're for a set period, but we've never
14 let anyone go like at the end of the contract
15 year, budget year, or something like that. We
16 continue them on in their contracted role until
17 they either move somewhere else, maybe move into
18 a full-time position if one becomes open, or
19 until -- I don't ever see a need for us not to
20 need them, at least in the foreseeable future,
21 unless the Governor's Office and State Budget
22 were to permit us additional full-time staff, but
23 for the foreseeable future, we'll need to

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1 contract staff to meet all of our obligations.

2 VICE-CHAIR RAMOS: Sure.

3 MR. FLEISCHHACKER: Then as far as

4 metrics go, as we've been seeing every month, our
5 numbers continue to be significantly up this year
6 versus last year. The calls, again, that's due
7 to much better tracking. Through the end of May
8 we've tracked 400 -- or 4,093 calls through the
9 Genesis system, compared to just under 1200 last
10 year in the same four-month time period.

11 Inquiries are up from 772 last year
12 to 1,166, or a 51-percent increase. Our
13 formalized complaints are up from 283 through
14 May 2022, to 527 so far through the end of May
15 of '23. That's an 86-percent increase. And then
16 settlement relief money is up from 378,000 to
17 462,000 through the end of May, a 22-percent
18 increase.

19 And I know that in June so far, I think
20 we've had about 3500, so it looks like we'll
21 crack the half-mil mark by the half year, so I
22 don't know if we'll stay on track to get over a
23 million dollars in relief by the end of the year,

16

1 but we're shooting for that, and we'll see if
2 that comes to fruition.

3 And one other thing that's interesting is

4 that, you know, we get people that contact us,
5 you know, they call, then we track inquiries that
6 are maybe more -- a little bit focused on
7 something that we might be able to do, and then
8 we try to get them to a formalized complaint.

9 Well, in 2022, through the end of May, we
10 had a 36-and-a-half percent inquiry to formalized
11 complaint rate, and so far in 2023, we have a
12 45-percent inquiry to formalized complaint rate,
13 so more of the inquiries that are coming in are
14 resulting in formalized complaints for continued
15 investigation and consideration.

16 So, a lot of good work going on on the
17 Operations side, a lot of good work going on on
18 the External Affairs, Education and Outreach
19 side, so everyone is staying extremely busy this
20 year, and it's keeping things fun.

21 CHAIRPERSON SLASH: Go ahead.

22 VICE-CHAIR RAMOS: To the Director,
23 on a national level, do you work -- who do you

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1 work with on that, you know, in D.C. that kind of
2 looks at all of this? Is there somebody that has
3 a big-picture view that reports to the President,
4 saying all of these kind of things? I'm just

5 kind of curious. I know we're doing some amazing
6 things here. It'd be interesting to see how the
7 rest of the world is doing.

8 MR. FLEISCHHACKER: We have like a
9 local EEOC like regional person and a local HUD
10 kind of regional person that -- who we work
11 directly with, and then they would kind of take
12 numbers up through their channels. I know both
13 the EEOC and HUD do a lot of tracking for their
14 numbers, but then also for the numbers for the
15 local agencies that work with them under
16 work-share agreements, so that information would
17 get funneled through them.

18 VICE-CHAIR RAMOS: But you don't see
19 it?

20 MR. FLEISCHHACKER: No, no --

21 VICE-CHAIR RAMOS: Hmm.

22 MR. FLEISCHHACKER: -- not directly,
23 but I can go on -- like EEOC just, I think,

18

1 recently put out their Fiscal Year 2022 numbers,
2 so those kind of things are out there. Some of
3 them include like the -- what are considered our
4 FEPA, Fair Employment Practices Agency, some of

5 them include those local numbers. Some of them
6 are just the numbers that EEOC handles on their
7 own, so --

8 VICE-CHAIR RAMOS: I mean I'm -- and
9 I apologize for the diversion, but you would
10 think, if you looked at the numbers, we would
11 say, "That's a spike." It isn't necessarily the
12 difference just being reported; right?

13 MR. FLEISCHHACKER: Uh-huh.

14 VICE-CHAIR RAMOS: So, it would be
15 interesting to see how that compares.

16 MR. FLEISCHHACKER: Yeah. I think
17 they are seeing corresponding increases in their
18 complaint numbers as well. I think a lot of
19 agencies, both on the state and federal level,
20 saw some dips during the COVID years, 2019, 2020
21 and 2021. You know, those -- and now we're
22 starting to see things kind of return back to
23 pre-COVID numbers, which, in 2017, 2018, those

19

1 were increasing, around the time of the "Me too"
2 movement and those kind of things.

3 So, when I was over in State Personnel, we
4 saw a lot of investigation numbers and complaint
5 numbers that were increasing during that time

6 period, and then COVID took a big hit to those,
7 and now I think we're starting to see
8 collectively those numbers start to get back to
9 where they were before.

10 CHAIRPERSON SLASH: I think my only
11 question that I had is: Is the phone reporting
12 and tracking system kind of shining a light on
13 the way that manual operations might have
14 misrepresented the workload? Because the numbers
15 are ballooning.

16 MR. FLEISCHHACKER: Yeah. Well, and
17 I think the previous numbers were -- you know,
18 the way that our system is now set up, it's not
19 just one person answering the phone when people
20 call in, because a lot of those calls would then
21 go to voicemail or something like that. Here
22 those calls are now being routed to individuals
23 to answer in real time. So, I think that a lot

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1 of those calls were not being tracked as calls
2 because they were voicemails and not calls. So,
3 I think it's just a better way of tracking,
4 especially the call volume.

5 The other things, I think -- again, I

6 think part of it is just the increased number of
7 complaints and contacts that are coming in from
8 people returning back from remote working,
9 interacting with people who are -- you know, a
10 lot of the housing stuff from COVID measures
11 relaxing, like the moratorium -- the COVID
12 moratoriums, things of that nature.

13 So, because more people are feeling
14 aggrieved and reaching out, and that might be a
15 byproduct of our awareness and education efforts
16 as well, in addition to more people feeling
17 aggrieved. But that's where we find ourselves,
18 and we're -- we deal with the people as they come
19 to us.

20 CHAIRPERSON SLASH: Okay.

21 VICE-CHAIR RAMOS: It's all good
22 info, but from -- someone from the outside to
23 look at it, saying, "What's going on in Indiana?"

21

1 All of these calls, all of these things going
2 on." And it's not the case.

3 MR. FLEISCHHACKER: Yeah.

4 CHAIRPERSON SLASH: Well, thank you.

5 Does anyone else have any questions?

6 (No response.)

7 CHAIRPERSON SLASH: Keep up the
8 amazing work. I can't wait to actually have it
9 on display a little bit next weekend.

10 MR. FLEISCHHACKER: Yeah. And I will
11 be doing a -- kind of a legal update from the
12 Commission's standpoint on Tuesday afternoon.

13 CHAIRPERSON SLASH: I'll be listening
14 for that.

15 So, we'll go ahead and get started with
16 our Old Business. In the case of Kesia Woods
17 versus Keystone RV Company, Case EMse22070341,
18 the case was assigned to Vice-Chair Ramos.

19 Do you have a recommendation?

20 VICE-CHAIR RAMOS: Yes, Madam Chair.
21 In this case, I recommend on both issues to
22 uphold the Director's finding of no probable
23 cause.

22

1 CHAIRPERSON SLASH: Is there a
2 motion?

3 COMM. JACKSON: Second.

4 CHAIRPERSON SLASH: I need a motion
5 and a second.

6 COMM. TOLLIVER: I'll move, he'll

7 second.

8 CHAIRPERSON SLASH: Okay.

9 (Laughter.)

10 CHAIRPERSON SLASH: Not as formal.

11 We are on the record, but --

12 MR. LOSTUTTER: Can we just do the
13 roll?

14 CHAIRPERSON SLASH: Well, I don't
15 think we need a roll, we just need to --

16 MR. FLEISCHHACKER: I think you can
17 just do a voice vote.

18 MR. LOSTUTTER: Voice vote?

19 CHAIRPERSON SLASH: All in favor?

20 COMM. SILBERBERG: Aye.

21 COMM. HARRINGTON: Aye.

22 VICE-CHAIR RAMOS: Aye.

23 COMM. JACKSON: Aye.

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1 COMM. TOLLIVER: Aye.

2 CHAIRPERSON SLASH: Aye.

3 Any opposed?

4 (No response.)

5 CHAIRPERSON SLASH: The case of

6 Tonya Campbell versus Santiago Bautista,

7 Case HOse22120727, the case was assigned to me,

8 and there were two issues, and my recommendation
9 is that we uphold the Deputy Director's finding
10 of no reasonable or probable cause on both
11 issues.

12 Is there a motion?

13 COMM. HARRINGTON: I'll move.

14 COMM. SILBERBERG: Second.

15 CHAIRPERSON SLASH: Thank you.

16 MR. LOSTUTTER: All in favor, say
17 aye.

18 COMM. SILBERBERG: Aye.

19 COMM. HARRINGTON: Aye.

20 VICE-CHAIR RAMOS: Aye.

21 COMM. JACKSON: Aye.

22 COMM. TOLLIVER: Aye.

23 CHAIRPERSON SLASH: Aye.

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1 MR. LOSTUTTER: Ayes have it.

2 CHAIRPERSON SLASH: Thank you.

3 The next case of Christina Clanin versus
4 the City of Whiting, Case EMse2301 -- I'm --
5 yeah, 23010018, the case was assigned to
6 Comm. Jackson.

7 Do you have a recommendation?

8 COMM. JACKSON: Recommend to uphold
9 the Director's finding of no probable cause.

10 CHAIRPERSON SLASH: Thank you.

11 Is there a motion?

12 VICE-CHAIR RAMOS: So moved.

13 COMM. TOLLIVER: So moved.

14 CHAIRPERSON SLASH: Okay. We'll take

15 a motion and a second from Comm. Tolliver and

16 Vice-Chair Ramos.

17 MR. LOSTUTTER: All in favor, say

18 aye.

19 COMM. SILBERBERG: Aye.

20 COMM. HARRINGTON: Aye.

21 VICE-CHAIR RAMOS: Aye.

22 COMM. JACKSON: Aye.

23 COMM. TOLLIVER: Aye.

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1 CHAIRPERSON SLASH: Aye.

2 MR. LOSTUTTER: Ayes have it.

3 CHAIRPERSON SLASH: Thank you.

4 The next case of Earlene Johnson versus

5 Pleasant View Apartments, LLC and Maco Management

6 Company, Inc., Case HOra23010192, the case was

7 assigned to Comm. Tolliver.

8 Do you have a recommendation?

9 COMM. TOLLIVER: Yes. I recommend
10 that we approve the Director's findings. There
11 were two issues of no reasonable cause under the
12 Indiana Fair Housing Act, and on the -- and no
13 probable cause under the Indiana Civil Rights
14 Law.

15 CHAIRPERSON SLASH: Thank you.

16 Is there a motion?

17 COMM. SILBERBERG: Motion.

18 COMM. HARRINGTON: Second.

19 CHAIRPERSON SLASH: Thank you.

20 MR. LOSTUTTER: All in favor, say
21 aye.

22 COMM. SILBERBERG: Aye.

23 COMM. HARRINGTON: Aye.

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1 VICE-CHAIR RAMOS: Aye.

2 COMM. JACKSON: Aye.

3 COMM. TOLLIVER: Aye.

4 CHAIRPERSON SLASH: Aye.

5 MR. LOSTUTTER: Ayes have it.

6 CHAIRPERSON SLASH: Thank you.

7 The next case, Pamela Schmucker versus

8 Pedcor Management Company d/b/a Ashton Point,

9 Case HOha22110641, the case was assigned to
10 Comm. Silberberg.

11 Do you have a recommendation?

12 COMM. SILBERBERG: Yes. There were
13 two issues of -- and on both, the first, on no
14 reasonable -- I uphold the decision of no
15 reasonable cause, and the second, no probable
16 cause.

17 CHAIRPERSON SLASH: Thank you.

18 Is there a motion?

19 COMM. TOLLIVER: So moved.

20 CHAIRPERSON SLASH: Second?

21 COMM. HARRINGTON: Second.

22 CHAIRPERSON SLASH: Thank you.

23 MR. LOSTUTTER: And all of those in

27

1 favor, say aye.

2 COMM. SILBERBERG: Aye.

3 COMM. HARRINGTON: Aye.

4 VICE-CHAIR RAMOS: Aye.

5 COMM. JACKSON: Aye.

6 COMM. TOLLIVER: Aye.

7 CHAIRPERSON SLASH: Aye.

8 MR. LOSTUTTER: Ayes have it.

9 CHAIRPERSON SLASH: Thank you.

10 So, we have five cases to appoint -- or to
11 assign today, and I'm going to probably assign
12 them down the line, but here we go. In the case
13 of Scott Gibbons [sic] versus Henry County
14 Planning Commission, Case HOha23020175, I'm going
15 to start on the other side and assign that to
16 Comm. Tolliver; in the case of Bob Denham versus
17 Amcor Flexibles North America, Case EMha22110691,
18 Comm. Jackson; the case of Bianca Smith versus
19 Highmark Residential, Case HOra23030233, that
20 case will be signed to Vice-Chair Ramos; the case
21 of LaToya Richardson versus Indiana University
22 and Purdue University Indianapolis,
23 Case EDra22110652, I'll assign that one to

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1 myself; and the case of Sumit Ghosh versus
2 Creekside Commons Homeowners Association, Inc.,
3 Case HOra23010028, Comm. Harrington; and
4 Comm. Silberberg, we'll give you the month off.

5 COMM. SILBERBERG: Okay. I'll get
6 the next month.

7 CHAIRPERSON SLASH: That concludes
8 that part. So, this section, we have some
9 Motions and Other Filings, and I would like for

10 David to help us provide clarity to the first
11 one. I believe these are decisions for me to
12 make; correct?

13 MR. FLEISCHHACKER: Correct.

14 CHAIRPERSON SLASH: Okay. But I just
15 want to make sure that for the -- I'd like for us
16 to all be on the same page and understand them,
17 and not just me.

18 We'll start with the first one, the case
19 of Laticia Brown on behalf of A.T. v.
20 Richland-Bean Blossom Community School
21 Corporation (Edgewood Intermediate School), the
22 motion is for a Definite [sic] Statement under
23 Trial Rule 12(E) in Case EDra23020144. The

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1 Respondents, by counsel, filed a Motion for a
2 More Definite Statement under Trial Rule 12(E),
3 stating that the pleading of the Complainant is
4 so vague and ambiguous that it does not provide
5 enough sufficient details for the Respondent to
6 reasonable prepare a response.

7 Indiana Trial Rule 12(E) allows for a
8 party to move to a more definite statement if a
9 pleading to which a responsive pleading is
10 allowed, that the filed motion should be

11 definitive enough to clarify the theory and basis
12 of cause of action, thus allowing party to fully
13 investigate, evaluate and respond to them.

14 So, for clarity, what is the action that
15 we are to take, and do you have any other
16 backstory?

17 MR. FLEISCHHACKER: Sure. Thank you,
18 Chair Slash.

19 So, the Respondent has filed this motion
20 referring to Trial Rule 12(E). Trial Rule 12(E)
21 is found in the Indiana Rules of Trial Procedure.
22 Under the Trial Procedures, under Rule 1, it
23 states that "Except as otherwise provided, these

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1 rules govern the procedure and practice in all
2 courts of the State of Indiana in all suits
3 of...civil nature whether cognizable as cases
4 [in] law, in equity, or of statutory origin."

5 Here, the Respondent is requesting that
6 the Complainant provide additional details to her
7 complaint that was filed with ICRC. Because the
8 item at issue is the complaint filed with ICRC,
9 it's my belief that Trial Rule 12(E) is not
10 applicable, as it is neither before a court of

11 the State of Indiana nor has it been elevated to
12 a lawsuit, and in some situations AOPA, the
13 Administrative Orders and Procedures Act, extends
14 Trial Rules to administrative proceedings.
15 However, determinations of probable cause or
16 investigations are, by statute, exempt from AOPA,
17 so that would not apply.

18 However, our Administration -- our
19 Administrative Code, under 910 IAC 1-2-10, under
20 that Code, a Respondent may file a motion in
21 writing within ten days after service of a
22 complaint requesting that the allegations in the
23 complaint be made more definite and certain.

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1 However, in this case, the request was not made
2 within ten days of service, but this section does
3 not expressly state that a request cannot be made
4 after the ten days, nor does it state that
5 requests made after ten days are automatically
6 denied.

7 CHAIRPERSON SLASH: Which is why we
8 have to make the decision?

9 MR. FLEISCHHACKER: Yes, ultimately,
10 yeah, as the Chair, you get to decide on this
11 motion. So, you know, all of that being said,

12 investigations and cause determinations are --
13 can be conducted more thoroughly if all parties
14 have sufficient information to adequately present
15 and support their positions to the investigator
16 or neutral factfinders.

17 At this point, Respondent is on notice as
18 to the general nature of Complainant's complaint,
19 but indicates additional details are required to
20 provide a full response, and that's not an
21 unreasonable request.

22 So, it's kind of my thought that the --
23 under Trial Rule 12(E), the motion should be

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1 denied; however, the Commission could entertain
2 and grant such a request under the Administrative
3 Code, the 910 IAC 1-2-10; however, the Commission
4 would need to identify what additional details it
5 seems necessary at this stage.

6 Details such as individual identities,
7 incident dates, locations, I mean more specific
8 actions or comments may be appropriate. However,
9 Respondent also asked for details on like damages
10 and specific remedies, and those may not be
11 appropriate during this investigative stage, nor

12 are they required under our statute for a
13 sufficiently complete complaint.
14 Likewise, if the Commission were to grant
15 the request under the Administrative Code, we
16 would also want to establish a deadline by which
17 the Complainant would need to provide the
18 additional details to cure any deficiencies
19 identified by the Commission, and then a
20 subsequent deadline for Respondent to submit its
21 response and position statement.

22 CHAIRPERSON SLASH: Okay.

23 VICE-CHAIR RAMOS: Madam Chair,

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1 having reviewed the complaint, is it ambiguous
2 that it requires that additional information?
3 MR. FLEISCHHACKER: The complaint --
4 and a lot of our complaints are general in
5 nature. This one talks about her child being
6 disciplined and some other kids not being
7 disciplined and some people saying this and
8 saying that, but no one's identified, so the
9 school has come back and said that, you know, "We
10 can't really respond to this complaint because we
11 don't know when these incidents occurred, we
12 don't know who is alleged to have made these

13 statements or the -- you know, the other kids
14 that were specifically involved. So, they're
15 asking for a little bit more information on when
16 these alleged incidents occurred so that they can
17 provide a robust position statement to defend the
18 school corporation.

19 VICE-CHAIR RAMOS: I'm sorry, Madam
20 Chair. I --

21 CHAIRPERSON SLASH: No, go ahead.

22 VICE-CHAIR RAMOS: -- this must be
23 the dais question day.

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1 Can you refer to it that the additional
2 information provided, which is not a requirement
3 of a particular title or reference in this, which
4 was kind of, as you said, it isn't really a
5 requirement, but we're providing a consideration
6 in that? So, it's -- so, I'm just saying in
7 future situations someone may refer, "Well, in
8 Case No. XXXX --"

9 CHAIRPERSON SLASH: Uh-huh.

10 VICE-CHAIR RAMOS: "-- you allowed
11 that." So, my thought is if you do that, provide
12 the clarity, then what?

13 CHAIRPERSON SLASH: And so, my big
14 question is: These are the things that generally
15 come out during the investigative component.

16 MR. FLEISCHHACKER: They often do,
17 but this complaint has been filed, and they're
18 required under statute to provide a response or
19 answer to a complaint within a certain time
20 period. They can provide an initial kind of
21 generic, general denial of the allegations, but
22 then they're required to file a more robust
23 position statement.

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1 CHAIRPERSON SLASH: Uh-huh.

2 MR. FLEISCHHACKER: Their position
3 that they're arguing is, is that "We don't have
4 enough information to even respond, because it's
5 just, you know, 'my kid was disciplined
6 differently than other kids'. Don't know who
7 those kids are, don't know when it occurred,"
8 those kind of things. So, they're looking for a
9 little bit more additional detail in order for
10 them to provide a response to the investigator.

11 CHAIRPERSON SLASH: Okay. So, I am
12 inclined to deny the Trial -- the Trial Rule
13 request and to go with the Administrative Rule,

14 and to grant it on behalf of basic incident
15 content; i.e., date and comparison. Does that
16 make sense?

17 MR. FLEISCHHACKER: (Nodded yes.)

18 CHAIRPERSON SLASH: Okay. Because
19 that would help to clarify and also strengthen on
20 behalf of the Complainant, and allows the
21 Respondent to also have a better reaction and
22 response, which would ultimately, if it makes it
23 back to us again, give us clarity in upholding or

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1 not when it comes down to the findings. So, that
2 is my determination, to deny the Trial Rule, but
3 to -- it would be what, an affirmation?

4 MR. FLEISCHHACKER: Grant.

5 CHAIRPERSON SLASH: Oh, grant the
6 Administrative Rule and ask for clarity with
7 direct incident information.

8 MR. FLEISCHHACKER: And so, that
9 would include kind of like the identities, dates,
10 locations, but not the damages or remedies?

11 CHAIRPERSON SLASH: Uh-huh. So,
12 identities, dates and comparisons, if they have
13 them.

14 MR. FLEISCHHACKER: Okay.
15 (Discussion off the record.)
16 CHAIRPERSON SLASH: Okay.
17 MR. FLEISCHHACKER: Just figuring
18 out, since there's minors involved, we want to be
19 mindful of --
20 CHAIRPERSON SLASH: Oh, I understand.
21 MR. FLEISCHHACKER: -- how we define
22 "information."
23 CHAIRPERSON SLASH: I was thinking on

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1 behalf of the decision that we made last week,
2 which also dealt with a school district, and the
3 next case I'm about to read also is inside a
4 school direct, and representing the people of the
5 State of Indiana, not necessarily the people that
6 they're concerned with, what is fair? And so,
7 clarity is fair. What you can face at the end is
8 not necessarily.
9 So, the next case is Sharika Fowler versus
10 Metropolitan School District of Washington
11 Township, Motion for Judgment on the Pleadings,
12 Case EMra23010071. The Respondent, by its
13 counsel, files a motion due to Complainant
14 failing to comply with the Claims Against Public

15 Schools Act, CAPSA, Indiana Code
16 Section 34-13-3.5, et seq, before filing her
17 complaint, which means that her case must be
18 dismissed on that basis as a matter of law.

19 This is the same as last month, and so, in
20 consistency, it's going to be my decision that we
21 deny this motion and that we consider continuing
22 this case through the process.

23 Okay. So, next we have Review of ALJ

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1 Decisions and Orders. The Administrative Law
2 Judge's order disposing of the proceeding becomes
3 a final order when affirmed under IC 4-21.5-3-29.
4 I don't know that I had to read all of that part,
5 but we do have some votes required on this one.
6 ICRC/Teresa Sparrow versus Advantix Property
7 Management, Case HOha23010064.

8 The Administrative Law Judge in this
9 matter dismissed with prejudice the complaint of
10 discrimination under the IFHA against the
11 Respondent, but did not move the complaint of
12 discrimination under the ICRL out of the
13 administrative forum. The objection period in
14 this matter has closed.

15 So, we just need a vote to affirm or
16 remand this one. Do I have a motion for this?
17 So, this one's been dismissed with prejudice, and
18 it's not been moved. The objection period has
19 closed, and there are no objections. Is there a
20 motion to affirm?

21 VICE-CHAIR RAMOS: Motion to uphold
22 the dismissal.

23 COMM. HARRINGTON: Second.

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1 CHAIRPERSON SLASH: Okay.

2 MR. LOSTUTTER: And all of those in
3 favor, say aye.

4 COMM. SILBERBERG: Aye.

5 COMM. HARRINGTON: Aye.

6 VICE-CHAIR RAMOS: Aye.

7 COMM. JACKSON: Aye.

8 COMM. TOLLIVER: Aye.

9 CHAIRPERSON SLASH: Aye.

10 MR. LOSTUTTER: Ayes have it.

11 CHAIRPERSON SLASH: Okay. We do not
12 have any ALJ decisions that were automatically
13 confirmed, so the next point that we have on our
14 agenda is to just verify that we'll all be
15 present on the 21st of July. We don't have a

16 conflict this year with Black Expo, and as of

17 last month, we all felt comfortable with it.

18 COMM. HARRINGTON: I have a conflict.

19 CHAIRPERSON SLASH: You do. You will

20 not be present.

21 But also, last month we didn't have enough

22 of us present to have the conversation about

23 potentially moving to another day to meet because

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1 of the conflicts of Friday, and we did pretty

2 well with the move to -- what was it, the fourth

3 Thursday last month?

4 MR. FLEISCHHACKER: Something like

5 that.

6 CHAIRPERSON SLASH: And we don't have

7 anything that tells us we can't meet on another

8 day, and so, I think that this is a healthy

9 conversation to have while we're all here today.

10 We've been standing third Friday of the month,

11 but that doesn't mean we have to be. Is there

12 another day that is more convenient?

13 COMM. SILBERBERG: Anything but

14 Fridays is better for me, because it --

15 especially as we get into the school year, it

16 interferes with my Sabbath.

17 COMM. HARRINGTON: Fridays are bad
18 for me because every board meeting I have is on
19 Friday, so like I said, this is the third one of
20 the day, so I try to protect it as much as I can,
21 but any day other than Friday would work, or I'll
22 figure it out.

23 CHAIRPERSON SLASH: How is Thursday?

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1 VICE-CHAIR RAMOS: Fine with me. I'm
2 flexible.

3 CHAIRPERSON SLASH: Would we like to
4 keep the July date, and moving forward, have us
5 verify our August, September, October, November,
6 before making a final movement?

7 COMM. HARRINGTON: Uh-huh.

8 COMM. SILBERBERG: Is Monday at all
9 possible?

10 CHAIRPERSON SLASH: I love Monday
11 meetings. Does anyone have an interest in a
12 Monday?

13 COMM. JACKSON: No.

14 COMM. TOLLIVER: I think the further
15 we -- if we're not on a Friday, it's just my
16 schedule gets crazy because things get scheduled,

17 and courts don't seem to want to schedule things

18 on Friday afternoons, for some reason.

19 CHAIRPERSON SLASH: Okay. So,

20 everyone's homework assignment is to look at

21 Monday and Thursday so that next month we can

22 verify which is the better day.

23 COMM. HARRINGTON: And what day --

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1 third or fourth?

2 CHAIRPERSON SLASH: Is the third okay

3 with everyone?

4 COMM. JACKSON: (Nodded head yes.)

5 COMM. SILBERBERG: It doesn't matter

6 to me.

7 CHAIRPERSON SLASH: So, if we look at

8 the third week of the month, Monday or Thursday,

9 we'll confirm next month.

10 COMM. HARRINGTON: Okay.

11 CHAIRPERSON SLASH: That's our

12 homework assignment.

13 COMM. SILBERBERG: Okay.

14 CHAIRPERSON SLASH: And with that, we

15 don't have any elections or trainings or

16 anything. Massive training coming up next week.

17 If anyone has not requested the virtual link, you
18 can.

19 MR. FLEISCHHACKER: And at some point
20 we still need to schedule the Commission training
21 that we missed in April, so --

22 CHAIRPERSON SLASH: Maybe once we
23 pick our new date, we'll have less conflicts.

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1 MR. FLEISCHHACKER: Yes.

2 CHAIRPERSON SLASH: Okay. Any
3 announcements?

4 (No response.)

5 CHAIRPERSON SLASH: All right.

6 There's no --

7 COMM. HARRINGTON: Oh, Happy Father's
8 Day.

9 CHAIRPERSON SLASH: Yeah, Happy
10 Father's Day.

11 COMM. JACKSON: Thank you.

12 CHAIRPERSON SLASH: We don't have
13 anyone here for public comment, so I will adjourn
14 our meeting. It is 1:53.

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16 Thereupon, the proceedings of
17 June 16, 2023 were concluded
at 1:53 o'clock p.m.

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1 CERTIFICATE

2 I, Lindy L. Meyer, Jr., the undersigned
3 Court Reporter and Notary Public residing in the
4 City of Shelbyville, Shelby County, Indiana, do
5 hereby certify that the foregoing is a true and
6 correct transcript of the proceedings taken by me
7 on Friday, June 16, 2023 in this matter and
8 transcribed by me.

9

10

11

Lindy L. Meyer, Jr.,

12

Notary Public in and

13

for the State of Indiana.

14

15 My Commission expires August 26, 2024.

16 Commission No. NP0690003

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