

Chapter Ind 89

EQUAL OPPORTUNITIES-FAIR HOUSING

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History: Chapter Ind 89 as it existed on October 31, 1969, was repealed and a new chapter Ind 89 was created, Register, November, 1969, effective November 1, 1969; chapter Ind 89 as it existed on October 31, 1981 was repealed and a new chapter Ind 89 was created effective November 1, 1981; chapter Ind 89 as it existed on July 31, 1987 was repealed and a new chapter Ind 89 was created effective August 1, 1987.

Ind 89.001 Purpose. The purpose of this chapter is to implement the laws prohibiting discrimination in housing, to provide a constructive, impartial and speedy procedure for resolving disputes of alleged housing discrimination and to work toward the goal of eliminating housing discrimination in this state.

History: Cr. Register, July, 1987, No. 379, eff. 8-1-87.

Ind 89.01 Definitions. In addition to those terms defined in s. 101.22, Stats., the following are definitions for terms used in this chapter:

(1) "Act" means s. 101.22, Stats., unless the context requires otherwise.

(2) "Administrative law judge" means the examiner appointed to conduct hearings under s. 101.22, Stats.

(3) "Age" in reference to protected classes of persons covered by the act means 18 years of age or older.

(4) "Complainant" means the person who files a complaint stating that an act of discrimination has occurred.

(5) "Day", when used in time computations in these rules, means a calendar day, except that if the last day of a time period is a Saturday, Sunday or legal holiday, the last day shall be the next working day.

(6) "Department" means the department of industry, labor and human relations.

(7) "Division" means the equal rights division of the department.

(8) "Lawful source of income" includes but is not limited to lawful compensation or lawful remuneration in exchange for goods or services

provided, profit from financial investments, any negotiable draft, coupon or voucher representing monetary value such as food stamps, social security, public assistance or unemployment compensation payments.

(9) "Licensing or chartering agencies" means those regulatory agencies established under state law to license persons to perform activities which are covered by the act.

(10) "Marital status" means the state of being single, married, separated, widowed or divorced.

(11) "Person" includes but is not limited to one or more individuals, partnerships, associations, corporations, joint stock companies, trusts, unincorporated organizations, trustees, or trustees or receivers in bankruptcy.

(12) "Probable cause" means a reasonable ground for belief that discrimination probably has been or is being committed.

(13) "Respondent" means the person named in a complaint as the person who has committed or who is responsible for an alleged act of discrimination.

(14) "Test" means a simulation of any transaction covered by the act for the purpose of comparing the responses given by persons such as landlords, sellers of real estate, lenders of money for real estate, and their agents, to individuals such as renters or buyers of real estate or borrowers of money for real estate, to determine whether discrimination as defined under s. 101.22, Stats., is being or has been committed.

History: Cr. Register, July, 1987, No. 379, eff. 8-1-87.

Ind 89.02 Testing. (1) **CONDITIONS.** The department may engage in testing for the purpose of verifying allegations of unlawful housing discrimination or to determine whether sufficient evidence exists to initiate its own complaint. Testing may occur under circumstances including but not limited to the following:

(a) Where there exist no other means for verifying or refuting the allegations contained in a complaint or where the findings of the investigator would be significantly strengthened by the inclusion of test results;

(b) Where the number or content of complaints against a specific respondent is sufficient to indicate that a pattern of unlawful discrimination may exist; or

(c) Where demographic statistics would lead a reasonable person to believe that a pattern of unlawful discrimination exists in a particular geographical area.

(2) **PROCEDURES.** (a) Any person engaged in testing for the department shall do so only after having received specific authorization by the department and after having successfully completed a specific training program approved by the department. Requests for test authorization or training program approval shall be filed with the administrator of the equal rights division.

(b) The results of each test for potential discrimination shall be submitted to the department in written form by those persons who conducted the test.

(c) No test which entails any form of entrapment shall be utilized by the department.

(3) **NOTICE.** The department may not give notice of testing to the persons who will be tested. If the testing is undertaken as the result of a complaint naming a specific respondent, the department shall delay sending the notice of the complaint to the respondent until after the completion of the testing.

History: Cr. Register, July, 1987, No. 379, eff. 8-1-87.

Ind 89.03 Complaint. (1) **CONTENT.** A complaint shall identify the full name and address of each complainant and respondent. It shall state clearly and concisely the facts constituting the alleged unlawful discrimination, including the dates of each occurrence.

(2) **FORM.** A complaint shall be written on a form which is available at any division office or job service office of the department, or on any other form acceptable to the department. The complaint shall be signed, notarized and verified.

(3) **WHO MAY FILE.** A complaint may be filed by any person or by the person's duly authorized representative. A complaint filed by a representative shall state that the representative is authorized to file the complaint. The department may make and file complaints on its own motion as provided in s. 101.22 (4) (b), Stats.

(4) **FILING.** A complaint may be filed at any division office. A complaint which does not meet the requirements of subs. (1) and (2) may not be accepted for filing.

(5) **ASSISTANCE.** Appropriate assistance in completing complaint forms shall be made available by the department. The division shall inform a complainant of the complainant's right to bring a private civil action as provided in s. 101.22 (7), Stats., and this information shall be included on the complaint form.

History: Cr. Register, July, 1987, No. 379, eff. 8-1-87.

Ind 89.04 Referral of complaints. If the department determines, after a review of a complaint filed with the department, that the complaint would be appropriate as a class action under the jurisdiction of the United States department of housing and urban development (HUD), the department shall refer the complaint to HUD.

History: Cr. Register, July, 1987, No. 379, eff. 8-1-87.

Ind 89.05 Review of complaints. (1) **PRELIMINARY REVIEW.** The department shall review every complaint filed to ascertain whether the complainant is protected by the act, whether the respondent is subject to the act, whether the complaint states a claim for relief under the act and whether it has been filed within the time period prescribed by the act. The department shall serve upon the parties a preliminary determination and order dismissing any complaint which fails to meet these requirements. The department shall serve the preliminary determination and order upon the complainant by certified mail, return receipt requested.

(2) **APPEAL TO THE ADMINISTRATOR.** A complainant may appeal from an order dismissing a complaint under sub. (1) by filing a written request

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with the administrator of the division. The request shall be filed within 20 days of the complainant's receipt of the order and shall state specifically the grounds upon which it is based. If a timely request is filed, the administrator, or a person designated by the administrator, shall review the preliminary determination and shall either affirm, reverse, modify or set aside the preliminary determination and order. Such decision shall be served upon the parties. If the decision reverses or sets aside the preliminary determination, the complaint shall be referred for investigation. If the decision affirms the preliminary determination, it is the final decision of the department and shall be subject to review in court.

History: Cr. Register, July, 1987, No. 379, eff. 8-1-87.

Ind 89.06 Withdrawal and amendment of complaints. (1) **WITHDRAWAL.** A complaint may be withdrawn at any time. A request for withdrawal shall be written and shall be signed by the complainant or by the complainant's duly authorized representative or attorney of record. Upon the filing of a request for withdrawal, the department shall dismiss the complaint by written order. Such dismissal shall be with prejudice unless otherwise expressly stated.

(2) **AMENDMENT.** Subject to the approval of the department, a complaint may be amended no later than 10 days before hearing unless good cause is shown for the failure to amend the complaint prior to that time. A supplemental complaint alleging that the respondent has violated s. 101.22 (4m), Stats., in response to the initial complaint may be filed at any time prior to hearing. Any amended or supplemental complaint shall be investigated by the division.

History: Cr. Register, July, 1987, No. 379, eff. 8-1-87.

Ind 89.07 Notice to respondents. Upon the filing of an initial, amended, final or supplemental complaint, the department shall promptly serve a copy of the complaint upon the respondent, except where testing may be conducted under s. Ind 89.02. The initial complaint shall be served prior to the commencement of the investigation by the division, except where testing may be conducted under s. Ind 80.02. The notice shall be sent by first class mail. The notice to the respondent shall include a written statement from the division directing the respondent to respond in writing within 10 days of the date of the notice to the allegations in the complaint and further stating that if the respondent fails to answer the allegations of the complaint in writing the division will make an initial determination as to whether or not discrimination has occurred based only upon the division's investigation and the information supplied by the complainant.

History: Cr. Register, July, 1987, No. 379, eff. 8-1-87.

Ind 89.08 Cooperation of complainant. The department may dismiss the complaint if the person who filed the complaint fails to respond to the department within 10 days from the date of mailing of any correspondence from the department concerning the complaint, provided that such correspondence was sent by certified mail, return receipt requested, to the last known address of the complainant.

History: Cr. Register, July, 1987, No. 379, eff. 8-1-87.

Ind 89.09 Investigations. (1) The department shall investigate all complaints which satisfy the review under s. Ind 89.05 and may subpoena

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persons or documents for the purpose of the investigation. Subpoenas may be enforced pursuant to s. 885.12, Stats.

(2) If, during an investigation, it appears that the respondent has engaged in discrimination against the complainant which is not alleged in the complaint, the department may advise the complainant that the complaint should be amended. If the complaint is amended, the department shall investigate the allegations of the amended complaint as well as the allegations of the initial complaint.

History: Cr. Register, July, 1987, No. 379, eff. 8-1-87.

Ind 89.10 Temporary restraining orders. (1) The department may seek appropriate temporary injunctive relief from the circuit court in instances including but not limited to the following:

(a) If an impending action on the part of the respondent would result in the clear loss of appropriate remedy to the complainant if the action were not temporarily halted; and

(b) If, based on a limited investigative inquiry, there is sufficient reason to believe that a full investigation would result in a finding of probable cause that discrimination did occur.

(2) If a temporary restraining order is requested by the department and is granted by the court, the department shall immediately expedite its investigation of the complaint.

History: Cr. Register, July, 1987, No. 379, eff. 8-1-87.

Ind 89.11 Initial determinations as to cause. (1) **GENERAL.** At the conclusion of the investigation, the department shall issue a written initial determination which shall state whether or not there is probable cause to believe that any discrimination occurred as alleged in the complaint. The initial determination shall state the facts upon which it is based and shall be served upon the parties and their attorneys of record.

(2) **PROBABLE CAUSE.** If the department initially determines that there is probable cause to believe that any discrimination occurred as alleged in the complaint, it may refer those allegations to conciliation. The department may, by a notice to be served with the initial determination, notify the parties that conciliation services are available but that if conciliation fails or is waived the matter shall be set for hearing. Service of the notice and accompanying initial determination shall be made upon the parties by first class mail.

(3) **NO PROBABLE CAUSE.** If the department initially determines that there is no probable cause to believe that discrimination occurred as alleged in the complaint, it may dismiss those allegations. The department shall, by a notice to be served with the initial determination, notify the parties of the complainant's rights to appeal as proved in Ind 89.12. Service of the initial determination and notice shall be made by certified mail, return receipt requested.

History: Cr. Register, July, 1987, No. 379, eff. 8-1-87.

Ind 89.12 Appeals of initial determinations of no probable cause. Within 10 days after receipt of an initial determination that there is no probable cause, a complainant may file with the division a written request for a hearing on the issue of probable cause. If no timely written request is

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filed, the initial determination's order of dismissal shall be final. If a timely written request is filed, the division shall issue a notice certifying the matter to hearing. A hearing on the issue of probable cause shall be noticed and conducted in accordance with the provisions of ss. Ind 89.14 and Ind 89.16 to 89.22, except that the parties may stipulate prior to the hearing that the administrative law judge may decide the case on the merits.

History: Cr. Register, July, 1987, No. 379, eff. 8-1-87.

Ind 89.13 Conciliation. (1) **RESOLUTIONS OF DISPUTES.** When a matter is referred to conciliation following a determination of probable cause, the department shall attempt to resolve the dispute between the parties by conciliation, unless either party waives conciliation in writing.

(2) **CONCILIATION AGREEMENT.** If conciliation resolves the dispute, a written conciliation agreement shall be prepared which shall state all measures to be taken by any party. The agreement may provide for dismissal of the complaint, provided that such dismissal is without prejudice to the complainant's right to pursue the complaint against any respondent who fails to comply with the terms of the agreement.

(3) **WAIVER OR FAILURE OF CONCILIATION; CERTIFICATION TO HEARING.** If an attempt at conciliation is waived or unsuccessful, the department shall issue a notice certifying the matter to hearing. A hearing on the merits shall thereafter be noticed and conducted in accordance with the provisions of ss. Ind 89.14-89.22. The department shall also notify the appropriate licensing and chartering agencies of its probable cause finding pursuant to s. 101.22 (8), Stats.

History: Cr. Register, July, 1987, No. 379, eff. 8-1-87.

Ind 89.14 Notice of hearing. (1) **GENERAL.** In any matter which has been certified to hearing pursuant to either s. Ind 89.12 or 89.13 (3), the department shall advise the parties and their representatives in writing, by first class mail, of the specific time, date and place established for the hearing by issuance of a notice of hearing. The notice of hearing shall fully identify the parties and the case number. It shall specify a time and date of hearing not less than 10 days after the date of mailing of the notice of hearing. The notice of hearing shall specify the nature of the discrimination which is alleged to have occurred and shall state the legal authority on which the hearing is based. A copy of the complaint shall be attached to the notice of hearing.

(2) **PLACE OF HEARING.** The hearing shall be held in the county where the alleged act of discrimination occurred. For purposes of this subsection, the county where the alleged act of discrimination occurred is the county where the housing which is the subject of the complaint is located, unless no specific housing is involved, in which case the county where the alleged act of discrimination occurred is the county where the respondent resides.

History: Cr. Register, July, 1987, No. 379, eff. 8-1-87.

Ind 89.15 Answer. (1) **WHEN REQUIRED; FILING AND SERVICE.** Within 10 days after the date of a notice of hearing on the merits, each respondent shall file with the division an answer to the allegations of the complaint. The department shall serve a copy of the answer upon all other parties.

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(2) **ANSWER; CONTENTS.** The answer shall contain the respondent's current address. It shall also contain a specific admission, denial or explanation of each allegation of the complaint. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an averment, the respondent shall so state and this will have the effect of a denial. Admissions or denials may be to all or part of an allegation, but shall fairly meet the substance of the allegation. Any affirmative defense relied upon, including without limitation the statute of limitations, shall be raised in the answer unless it has been previously raised by motion in writing. Failure to raise the affirmative defense that a complaint is barred by the statute of limitations in an answer filed within the time permitted under sub. (1) may, in the absence of good cause, be held to constitute a waiver of such affirmative defense.

History: Cr. Register, July, 1987, No. 379, eff. 8-1-87.

Ind 89.16 Pre-hearing conference. In any case set for hearing, pre-hearings may be held in accordance with the provisions of s. 227.44 (4), Stats.

History: Cr. Register, July, 1987, No. 379, eff. 8-1-87.

Ind 89.17 Subpoenas and motions. (1) **SUBPOENAS.** The administrative law judge may issue subpoenas whenever necessary to compel the attendance of witnesses or the production of documents. This may be done on the administrative law judge's own motion or upon proper application of any party. Service shall be in the manner prescribed by law. Subpoenas may be enforced pursuant to s. 885.12, Stats.

(2) **MOTIONS.** Motions made during a hearing may be stated orally and shall, with the ruling of the administrative law judge, be included in the record of the hearing. All other motions shall be in writing and shall state briefly the relief requested and the grounds upon which the moving party is entitled to relief. All written motions shall be filed with the administrative law judge or with the director of the division's bureau of legal services. Any party opposing the motion may file a written response. All written motions shall be decided without further argument unless requested by the administrative law judge or director.

History: Cr. Register, July, 1987, No. 379, eff. 8-1-87.

Ind 89.18 Pre-hearing discovery. A party may obtain discovery prior to hearing, except that discovery directed to a complainant who is not represented by legal counsel may not be permitted in the absence of written consent by the administrative law judge. The scope of discovery, the methods of discovery and the use of discovery at hearing will be the same as set forth in ch. 804, Stats. The administrative law judge has the same authority to compel discovery, to issue protective orders and to impose sanctions as the court has under ch. 804, Stats. Copies of all demands for discovery and responses to demands for discovery shall be filed with the division when they are served. Discovery may not be used prior to the time that a matter is certified to hearing, except that the taking and preservation of evidence shall be permitted prior to certification to hearing under the circumstances set forth in s. 227.45 (7), Stats.

History: Cr. Register, July, 1987, No. 379, eff. 8-1-87.

Ind 89.19 Disqualification of the administrative law judge. Upon the administrative law judge's own motion, or upon a timely and sufficient affidavit filed by any party, the administrative law judge shall determine

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whether to disqualify himself or herself because of personal bias or other disqualification. Such determination shall be made a part of the record and decision in the case.

History: Cr. Register, July, 1987, No. 379, eff. 8-1-87.

Ind 89.20 Hearings. (1) **PROCEDURE.** Hearings shall be conducted in conformity with the act and the provisions of ch. 227, Stats.

(2) **APPEARANCE OF PARTIES.** Parties may appear at the hearing in person and by counsel or other representative.

(3) **ACCELERATION OF HEARING.** The parties may file a written stipulation that the hearing be held less than 10 days after service of the notice of hearing.

(4) **POSTPONEMENTS AND CONTINUANCES.** All requests for postponements shall be filed with the administrative law judge or with the director within 10 days after the date of the notice of hearing, except where emergency circumstances arise after the notice is issued but prior to the hearing. Postponements and continuances may be granted only for good cause shown and not for the mere convenience of the parties, their attorneys or their representative.

(5) **FAILURE TO APPEAR.** If the complainant fails to appear at the hearing, either in person or by a representative, the administrative law judge shall dismiss the complaint. If a respondent fails to appear at the hearing, the hearing shall proceed as scheduled. If, within 10 days after the date of the hearing, any party who fails to appear shows good cause in writing for the failure to appear, the administrative law judge may reopen the hearing.

History: Cr. Register, July, 1987, No. 379, eff. 8-1-87.

Ind 89.21 Record of proceedings. (1) **TRANSCRIPTION OF RECORD.** A stenographic, electronic or other record of oral proceedings shall be made at all hearings conducted under the act. Transcription of the record for purposes other than judicial review shall be at the expense of any party who requests the transcription, at a reasonable compensatory fee as determined by the department. The record shall be transcribed into a written transcript at the department's expense only for the purpose of judicial review.

(2) **TRANSCRIPTS.** Copies of the written transcripts shall be at the expense of any party who requests the transcript, at a reasonable fee as determined by the department, except that copies shall be made available without cost to a party who submits a sworn affidavit of indigency and the inability to pay the cost of the transcript.

History: Cr. Register, July, 1987, No. 379, eff. 8-1-87.

Ind 89.22 Decision and order. (1) **GENERAL.** After the close of the hearing, including any briefing which may be allowed by the administrative law judge, the administrative law judge shall prepare a formal written decision which shall include findings of fact, conclusions of law and an order, and which may be accompanied by a memorandum opinion. A copy of the administrative law judge's decision shall be served on the parties by the department.

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(2) **CONTENTS OF DECISION AND ORDER AFTER HEARING ON THE ISSUE OF PROBABLE CAUSE.** After a hearing on the issue of probable cause, the administrative law judge shall issue a decision and an order which dismisses the allegations of the complaint or which orders the matter remanded for conciliation pursuant to s. Ind 89.13, depending upon the administrative law judge's findings and conclusions on the issue of probable cause. If the decision of the administrative law judge affirms the investigator's decision that no probable cause exists, a certified copy of the decision and order and a notice of appeal rights shall be sent by certified mail, return receipt requested, to each party and to their attorneys of record.

(3) **CONTENTS OF DECISION AND ORDER AFTER HEARING ON THE MERITS.** After a hearing on the merits, the administrative law judge shall issue a decision and an order which shall either dismiss the allegations of the complaint or shall order such action by the respondent as will effectuate the purposes of the act, depending upon the administrative law judge's findings and conclusions on the merits of the complaint. Penalties may be ordered as provided in s. 101.22 (6), Stats. A certified copy of the decision and order shall be served by first class mail to the last known address of each party to the proceedings and to their attorneys of record.

History: Cr. Register, July, 1987, No. 379, eff. 8-1-87; emerg. r. (4), eff. 4-29-91; r. (4), Register, October, 1991, No. 430, eff. 11-1-91.

Ind 89.23 Petition for review. (1) **GENERAL.** Any party may file a written petition for review of the administrative law judge's decision and order by the labor and industry review commission. The petition shall be filed with the division's Madison or Milwaukee office.

(2) **APPEAL OF ADMINISTRATIVE LAW JUDGE'S DECISION OF NO PROBABLE CAUSE.** If, after a hearing on the issue of probable cause, the administrative law judge issues a decision that no probable cause exists, the complainant may file a petition for review within 21 days from the date of receipt of the decision.

(3) **APPEAL OF OTHER DECISIONS.** A petition for review of any decision which is appealable to the labor and industry review commission, other than as set forth under sub. (2), shall be filed within 21 days after the date that a copy of the administrative law judge's decision and order is mailed to the last known addresses of the parties.

History: Cr. Register, July, 1987, No. 379, eff. 8-1-87; am. (3), Register, October, 1991, No. 430, eff. 11-1-91.