

CHARLESTON HUMAN RIGHTS COMMISSION

ADMINISTRATIVE RULES AND REGULATIONS

Chapter 62, Code of City of Charleston

Series IV (2005)

Subject: Administrative Rules and Regulations Pertaining To Practice and Procedures. Before the Charleston Human Rights Commission.

Formally passed and approved by the Charleston Human Rights Commission on January 19, 1999 following a thirty (30) days public comment period on such Rules and Regulations as set forth in Chapter 29A-3-1 et seq., West Virginia Code. *Revised, January 2005 to reflect the change of Chapter from Chapter 15 to Chapter 62. Revised, September 2007 adding sexual orientation to the list of protected classification*

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Human Rights Ordinances (Code of the City of Charleston)

SECTION 1 GENERAL 1.01

Every person before the Charleston Human Rights Commission shall have their rights, privileges, or duties determined with due regard for fundamental fairness. Any person may be represented by legal counsel at any stage of proceedings before the Commission. In any contested case before the Commission, all parties thereto shall be provided with adequate notice of hearing, fair hearing, and a written objective decision supported by substantial evidence.

1.02 Authority

These regulations are issued under authority of the Code of the City of Charleston, Chapter 62, in accordance with the provisions of **Article 3 (Section 29- A-3-1 et seq.)** Chapter 29A of the West Virginia Code and 24 CFR Part 14 et al. Implementations of the Fair Housing Amendments Act of 1988, Final Rule.

1.03 Effective Date

These regulations were promulgated on the **06th day of December, 2004** and became effective on this day, and as of such effective date, shall super- cede in full the Commission's previous Amended Rules and Regulations (November 24, 1998), based on original Rules and Regulations (effective February 28, 1968).

1.04 Filing Date

These regulations were filed in the Office of the City Clerk on the **insert filing date**.

1.05 Procedure Governed

These regulations shall govern all practice and procedure before the Charleston Human Rights Commission (hereinafter referred to as the Commission) unless otherwise directed by the Commission.

1.06 Liberal Construction

These regulations shall be liberally construed to permit the Commission to discharge its statutory functions and to secure just and expeditious determination of all matters before the Commission.

1.07 Deviation from Regulations

In special cases, where good cause appears, not contrary to statute, the Commission may permit deviation from these regulations insofar as it may find compliance therewith to be impractical or unnecessary.

1.08 Practice Where Relations Do Not Govern

In situations where these regulations do not apply, the Commission's discretion shall be exercised in accordance with traditional notions of fair play and substantial justice.

1.09 Severability

If any of these regulations be held invalid, it shall not be construed to invalidate any of the other provisions of these regulations.

1.10 Availability of Regulations

The regulations of the Commission shall be on file in the Office of the City Clerk.

1.11 Additional Copies

Additional copies of the regulations of the Commission shall be available to the general public at any Commission office upon request.

1.12 Delegation of Powers and Duties

Except where contrary to Law the Commission may delegate any of the powers and duties of the Commission to members of the staff or employees of the Commission.

1.13 Effect of Amendments to the Law

In the event that the Charleston Human Rights Ordinance, Code of the City of Charleston, Chapter 62, is amended by the City Council, these rules and regulations will automatically be amended to conform to such amendments.

SECTION 2 DEFINITIONS

All words defined in Chapter 62, Section 3 of the Charleston Human Rights Ordinance shall have the meanings therein ascribed to them for the purposes of these regulations. All other words shall have the meanings herein ascribed to them.

When used in this chapter:

- (a) **“Age”** means forty or above.
- (b) **“Chair”** means the chair of the Charleston Human Relations Commission.
- (c) **“Commission”** means the Charleston Human Relations Commission.
- (d) **“Discriminate” or “discrimination”** means to exclude from, or fail or refuse to extend to, a person equal opportunities because of race, religion, color, national origin, ancestry, sex, age, blindness, handicap or familial status and includes “to separate” or “segregate”.

(e) “**Employee**” shall not include any individual employed by his parents, spouse or child, or in the domestic service of any person.

(f) “**Employer**” means any person employing twelve or more persons within the City and includes an agent of such person, and its agencies. Provided, that such terms shall not be taken, understood or construed to include a private club, which, in fact, is not open to the public.

(g) “**Employment agency**” includes any person regularly undertaking with or without compensation to procure, recruit, refer or place employees. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be an employment agency.

(h) “**Familial status**” means one or more individuals (who have not attained the age of eighteen years) being domiciled with:

- (1) A parent or another person having legal custody of such individual or individuals; or
- (2) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years. Nothing in this definition restricts advertisements of dwellings which are intended and operated for occupancy by older persons and which constitute housing for older persons.

(i) “**Handicap**” means a person who:

- (1) Has a mental or physical impairment which substantially limits one or more of such person’s major life activities; “major life activities” includes functions such as caring for one’s self, performing manual tasks, walking, hearing, seeing, speaking, breathing, learning and working;
- (2) Has a record of such impairment; or
- (3) Is regarded as having such an impairment.

For this purposes of this article “**handicap**” does not include persons whose current use of or addiction to alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reasons of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

(j) For the purpose of this article, a person shall be considered to be blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is occasioned by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

(k) “**Housing accommodations**” means any building or portion thereof which is used or intended for use as the residence or sleeping place of one or more persons. Nothing contained in this definition or this article shall apply to the rental of a room or rooms in a rooming house occupied by the owner as a place of residence and containing no more than four rented rooms, or

rooms to be rented.

(l) **“Labor organization”** includes any organization which exists for the purpose, in whole or in part, for collective bargaining or for dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment.

(m) **“Person”** means one or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers and other organized groups of persons.

(n) **“Owner”** shall include the owner, lessee, sublessee, assignee, manager, agents or other person having the right to sell, rent or lease any housing accommodation or real property within the city or any agent of any of these.

(o) **“Place of public accommodations”** means any establishment or person, as defined herein, including the City and any of its affiliated boards and commissions, or any political or civil subdivision thereof, which offers its services, goods, facilities or accommodations to the general public, but does not include any accommodations which are in their nature private.

(p) **“Purchaser”** includes any occupant, prospective occupant, lessee, prospective lessee, renter, prospective renter, buyer or prospective buyer.

(q) **“Real estate broker”** includes any person, firm or corporation who, for a fee, commission or other valuable consideration, or by reason of a promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase or rental of real estate or an interest therein, or collects or offers or attempts to collect rent for the use of real estate or solicits for a prospective purchaser, or assists or desists in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting or auctioning of any real estate, or negotiates, offers or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon transfer of any real estate for others, or any person who, for pecuniary gain or expectation of pecuniary gain, conducts a public or private competitive sale of lands or any interest in lands. In the sale of lots, the term “real estate broker” also includes any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate at a stated salary, or upon a commission, or upon a salary and commission, or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange of any such lot or parcel of real estate. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be a real estate broker.

(r) **“Real estate salesman”** includes any person who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed by and operates under the supervision of real estate broker to sell, buy or offer to buy or negotiate the purchase, sale or exchange of real state, offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate for others, or to collect rents for the use of real estate, or to solicit for prospective purchasers or lessees of real estate, or who is employed by a licensed real estate broker to sell or offer to sell lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise, to sell real estate, or any parts thereof, in lots or other parcels.

(s) **“Real property”** includes real estate, lands, leaseholds, commercial or industrial buildings and any vacant land offered for sale or rent on which the construction of a

housing accommodation, commercial or industrial building is intended, and any land operated as a trailer camp or rented or leased for the use, parking or storage of mobile homes or house trailers.

(t) **“Rooming house”** means a house or building where there is one or more bedrooms which the proprietor can spare for the purpose of giving lodgings to such persons as he chooses to receive.

(u) **“Sexual orientation”** means actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity, appearance, or behavior of an individual, with or without regard to the individual’s assigned sex at birth

(v) **“Unlawful discriminatory practices”** includes only those practices specified in section 62-81.

SECTION 3 COMMISSION'S ELECTIONS AND TENURE OF OFFICERS, QUORUM AND VOTING PROCEDURES

3.01 As soon as practicable after the first day of July, the Commission shall elect from its members by a majority vote of the Commission, a Chairperson, a Vice Chairperson and such other officers as the Commission may determine, who shall serve for a period of one year and until their successors have been duly elected and qualified.

3.02 A majority of all the members of the Commission shall constitute a quorum.

3.03 A majority of all the members shall be required to decide matters of a non-ministerial nature, but a majority of a quorum shall decide ministerial matters. A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission.

3.04 In absence of a quorum, to facilitate the timely handling of a case determination, the Executive Director may review the facts of said case and make a determination. The Executive Director must then notify the Commissioner designate of the instituting of this procedure. The Commissioner designate then has the opportunity to schedule a meeting within ten (10) days before determination is effected.

SECTION 4 COMPLAINTS

4.01 Who May File

(A) Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice or act may make, sign and file with the Commission a verified complaint in writing.

(B) Any employer, who’s employees, or some of them hinder or threaten to hinder compliance with the provisions of the Law, may make, sign and file with the Commission a verified complaint requesting assistance by conciliation or other remedial action.

(C) The Commission, Mayor, or the City Solicitor may make, sign and file a complaint whenever it or he has reason to believe that any person(s) have been engaged, or are engaging, or propose to engage in an unlawful discriminatory practice or act.

(D) Any organization which has an individual member claiming to be aggrieved by an unlawful discriminatory practice may make, sign and file with the Commission a verified complaint in writing.

(E) Any complaint deferred to the Commission by the United States Department of Housing and Urban Development pursuant to the Civil Rights Act of 1968 shall be deemed filed with the Commission as of the date such complaint was received by the Department of Housing and Urban Development, provided the complaint substantially conforms to the requirements of the Charleston Human Rights Law.

4.02 Complaint Assistance

Assistance in drafting and filing complaints shall be available to complainants at the Commission's offices or through the Commission and its professional staff.

4.03 Complaint Form

The complaint shall be in writing, the original being signed and verified before a notary public or any other person duly authorized to administer oaths and take acknowledgments. The original and two additional copies of the complaint shall be filed with the Commission, provided that the Executive Director of the Commission may waive the furnishing of the aforesaid two additional copies. The complaint, where feasible, shall be supplied by the Commission upon request. Notaries service shall be furnished without charge by the Commission.

4.04 Contents

(A) Each complaint shall contain the following to the best information of the complainant:

- (1) The full name and address of the complainant;
- (2) The full name and address of the respondent;
- (3) A concise statement of the facts which complainant believes indicates and unlawful discriminatory practice;
- (4) The date or dates of the alleged unlawful discriminatory practice or if the alleged unlawful discriminatory practice or act is of a continuous nature, the dates between which said continuous acts are alleged to have occurred, and
- (5) The notarized signature of the complainant.

(B) Notice the provisions of paragraph (A) of this section, a complaint is deemed filed if the Commission receives from a person a written statement sufficiently precise to identify the parties and to describe generally the alleged unlawful discriminatory practice or act.

4.05 Manner of Filing

- (A) Where to file - Complainants may file at the Commission office either by personal delivery or mail.
- (B) What Constitutes Filing - The complaint shall be deemed filed as of the date of:
- (1) The postmark, if the complaint is filed by mail, or its receipt at the Commission's office if no postmark is visible, or
 - (2) Receipt at the Commission's office if filed by personal delivery.
- (C) Verification of Receipt of Complaint - When a complaint is received at the Commission office, the person accepting the complaint shall stamp the complaint with the date it was filed and initial the filing stamp
- (D) Timely Filing of Complaints Other Than Fair Housing - The complaint must be filed within ninety (90) days after the occurrence of the alleged unlawful discriminatory practice or act.
- (E) Timely Filing of Fair Housing Complaints - Complaints must be filed no later than one (1) year after an alleged discriminatory housing practice or act has occurred or terminated.
- (F) Continuing Wrong - If the alleged unlawful discriminatory practice or act is of a continuing nature, the date of occurrence of said alleged unlawful practice or act shall be deemed to be any date subsequent to the commencement of the alleged unlawful practice or act, up to and including the date upon which the unlawful practice has ceased.
- (G) Memorandum of Complaint. Where the Commission is informed by an individual claiming to be aggrieved and who has provided sufficient information, within three (3) days prior to the expiration of the applicable time limitations, as previously specified in Section 4.05(D) and (E), of an alleged violation of the Ordinance; the Commission may institute a Memorandum of Complaint. Such Memorandum of Complaint shall contain essential elements of a complaint as required by the regulations, excepting signature and verification before a notary public or other person drafting such Memorandum of Complaint. A complaint received by the Commission subsequent to but not later than ten (10) working days after the institution of said Memorandum and based upon said Memorandum of Complaint shall be deemed filed as of the date of said Memorandum of Complaint.
- (H) Timeliness of Federal Agency Deferrals. Any complaints alleging acts which are unlawful under the Charleston Human Rights law which are filed with the Federal agencies which have deferral arrangements with the Commission, shall be deemed filed with the Commission on the same day as the complaint was received by such Federal agency.

4.06 Amendments

- (A) The Commission or the complainant may amend a complaint or any part thereof to cure technical defects or omissions, including but not limited to, failure to verify the complaint, to clarify and amplify allegations made therein, the correct name and address of the respondent, etc., and such amendment alleging additional acts constituting unlawful discriminatory practices or

acts not related or growing out of the subject matter of the original complaint will be permitted only where at the date of the amendment the allegations could have been timely filed as a separate charge.

(B) A complaint may be amended as a matter of right prior to the issuance of a notice of hearing, and thereafter for good cause shown at the discretion of the Chairperson or, at the Chairperson's discretion, by the Hearing Examiner.

4.07 Supplemental Complaints

Prior to the issuance of a notice of hearing, and upon request of the complainant, the Commission may upon such terms as are just, permit the complaint to file a supplemental complaint setting forth transactions, occurrences, or events which have happened since the date of the original complaint. The Commission shall have the right to file such supplemental complaint upon its own initiative.

4.08 Notice to Complainant

Upon the filing of a complaint, the agency shall serve notice with a copy of the verified complaint upon the complainant acknowledging the filing and advising the complainant of his/her procedural rights and obligations under the Ordinance.

4.09 Notice to Respondent

(A) Upon the filing of any complaint, supplemental complaint or amended complaint not based on a violation of Fair Housing provisions of the Ordinance, the Commission shall furnish the respondent with a copy thereof by mail or in person as soon as investigation of said complaint has begun or, in any case, within one year of the filing. Respondent may file a written answer or other responsive pleading to said complainant. The respondent will also be advised of his or her procedural rights and obligations under the law.

(B) Upon the filing of a *Fair Housing* complaint, the Commission shall, not later than ten (10) days after such filing, serve notice and a copy of the complaint upon the respondent or person charged with the commission of a discriminatory housing practice or act advising of his or her procedural rights and obligations under the ordinance. Respondent may file a written answer or other responsive pleading to said complaint.

4.10 Withdrawal of Complaint

(A) Upon request of the complainant, a complaint or any part thereof may be withdrawn without prejudice to the complainant, on written consent as hereinafter set forth.

(1) If the request for withdrawal is made before the case has been noted for hearing, the written consent of the Investigating Commissioner shall be obtained.

- (2) If the request for withdrawal is made after the case has been noted for hearing, the written consent of the Chairperson shall be obtained.
- (B) If request by the complainant for withdrawal of a complaint or any part thereof is granted, the Commission may initiate its own complaint based on the allegations of the withdrawn complaint.
- (C) The respondent may submit written objection to the withdrawal of the complaint without prejudice.

4.11 Dismissal of Complaint

Where the allegations of a complaint on its face, or as amplified by the statements of the complainant to the Commission, disclose that the complaint is not timely filed or otherwise fails to state a valid claim for relief under the Law, the Commission may dismiss the complaint without further action. The Commission may also dismiss a complaint if the complainant fails or refuses to cooperate with the Commission or if the allegations of the complaint shall become moot. Complainant and respondent, where the complaint has been served, shall be notified in writing of the disposition of the complaint together with the reasons therefore and the complainant shall be notified of the right of administrative review as provided in Section 5.12.

SECTION 5 INVESTIGATION AND CONCILIATION

5.01 Investigation and Discovery

- (A) The Commission may interview or take deposition or the testimony of any person, including a party, relating to the subject matter of a complaint.
- (B) The Commission may order any person, including a party, to produce and permit the inspection and copying or photographing of any designated documents, papers, books, accounts, letters, photographs or other tangible things, not privileged, which may constitute or contain evidence relating to the subject matter of a complaint.
- (C) The Commission may order any party to complete questionnaire or interrogatories relating to the subject matter of a complaint. Such questionnaire or interrogatories shall be completed and returned to the Commission within thirty (30) days of receipt thereof. For good cause, the Executive Director may grant an extension of time for the completion and return.
- (D) To effectuate the purpose of the Law, whenever possible the Commission will obtain documentary evidence, statements, and testimony from witnesses, depositions, questionnaires and interrogatories by voluntary compliance with the request of the Commission for such discovery. However, if there is non-compliance with such voluntary requests for discovery, such actions shall, at the discretion of the Executive Director, result in the application of an adverse inference against the party to whom the request for discovery is propounded regarding all un- answered inquiries. If it is decided to apply such adverse inference against a party, such party must be notified of this action in writing. If the party subsequently comes forward with information to the satisfaction of the Executive Director, such adverse inference shall not be applied.

If there has been non-compliance with the request of the Commission for such discovery, or if in the opinion of the Investigating Commissioner and/or the Executive Director, the situation so warrants, upon the concurrence of at least five members of the Commission, the Investigating Commissioner and/or the Executive Director may seek the issuance of subpoenas and subpoenas duces tecum in the name of the Commission for the purpose of obtaining any information relevant to any lawful activity of the Commission. Such subpoenas and subpoenas duces tecum may be issued by the appropriate Circuit Court.

5.02 Fair Housing Limitations

The Fair Housing Agency shall commence proceedings with respect to the complaint before the end of the 30th date after receipt of the complaint.

(A) The agency shall investigate the allegations of the complaint and completes the investigation in no more than one hundred (100) days after receipt of the complaint, unless impracticable.

(B) If the agency is unable to complete the investigation within one hundred (100) days, it shall notify the complainant and respondent in writing of the reasons for not doing so;

(C) The agency shall make final administrative dispositions of a complaint within one year of the date of receipt of a complaint unless it is impracticable to do so. If the agency is unable to do so, it shall notify the complainant and respondent, in writing, of the reasons for not doing so.

5.03 Settlement During Investigation

If terms of settlement are agreed between complainant and respondent during the investigation of a complaint, they shall be reduced to writing, signed by the parties and submitted to the Executive Director for approval in accordance with Section 5.05. If so approved, the Commission shall thereupon enter an order incorporating the terms of settlement and dismissing the complaint pursuant thereto without a finding on the merits of the complaint. Said order shall be served by the Commission on all parties.

5.04 Finding of No Probable Cause

(A) The Investigating Commissioner shall authorize an order dismissing a complaint when he or she has determined, after an investigation of the allegations of such complaint, that there is no probable cause to believe the respondent has engaged in an unlawful discriminatory practice. A copy of an order dismissing a complaint shall be served upon the complainant within ten (10) days of such determination and upon the respondent within ten (10) days of the exhaustion of any administrative appeal of such order which the complainant may utilize. Such order shall be a final decision of the Commission unless an appeal is taken as provided in Section 5.12.

(B) If the Investigating Commissioner rules that there is no probable cause to credit the allegations or findings of a pattern and practice of discrimination by the respondent, no matter whether such pattern and practice were alleged by the complainant or discovered through investigation, the individual complainant shall be dismissed from further proceedings by the Commission (pending any appeal taken under Section 5.12), the Commission shall be substituted

in the complainant's place, and the complaint shall go forward in the name of the Commission as provided in Section 5.05 below.

5.05 Finding Of Probable Cause: Conciliation and Persuasion

- (A) If the Investigating Commissioner finds that probable cause exists for crediting the allegations of the complaint, he and/or the Commission's staff shall immediately endeavor to eliminate the unlawful discriminatory practice by conference, conciliation and persuasions.
- (B) Before commencing such conference and conciliation, the Executive Director shall enter into the record of the case a progress statement that formal conference and conciliation procedures are to be commenced based on the finding of probable cause to credit the allegations of the complaint.
- (C) If the Investigating Commissioner and/or the Commission's staff succeed in endeavors at conference, conciliation and persuasion, the complainant shall be notified in writing of the terms of the proposed conciliation agreement and of complainant's right to apply to the Chairperson for reconsideration of such terms of conciliation in accordance with Section 5.12.
- (D) If the terms which are reached at the conciliation conference are approved by the complainant and the respondent, the complainant and the respondent shall sign the conciliation agreement.
- (E) The Executive Director shall approve the conciliation agreement. Upon said approval, the conciliation agreement shall become effective. If the Executive Director disapproves the proposed conciliation agreement, it shall be of no effect and a further conciliation conference or a public hearing shall be scheduled by the Executive Director as the commission shall direct. Upon approval by the Executive Director, a conciliation agreement shall have the same force and shall be subject to the same judicial review as a final order of the Commission.

5.06 Termination Of Conciliation Proceedings Without the Claimant

The Commission may, without the consent of the complainant, close the case, if in its opinion, a written agreement signed by the respondent and the Commission provides for the elimination of the unlawful discriminatory practice or act, the elimination of the effects of the unlawful discriminatory or act with respect to the complainant, and appropriate action as to effectuate the purposes of the Law.

5.07 Confidentiality of Conciliation Endeavors

- (A) Nothing that is said or done during and as a part of the endeavors of the Commission to eliminate unlawful discriminatory practices or acts by methods of conference, conciliation, and persuasion may be made a matter of public information by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the

parties concerned; PROVIDED, that the Commission shall publish the terms of a conciliation agreement when the complaint has been adjusted without disclosing the identities of the parties involved unless the complainant and respondent otherwise agree and the agency determines that disclosure is not required to further the purposes of the law ordinance.

(B) This section does not apply to such disclosures to representatives of Federal, State, and local agencies as may be appropriate or necessary to the carrying out the Commission's functions under the Ordinance; PROVIDED, that the Commission may refuse to make disclosures to any such agency which does not maintain the confidentiality of such endeavors in accordance with this section or in any circumstance where the disclosures will not serve the purposes of the effective enforcement of the Law.

(C) The requirements of this section shall not be construed to limit the power of the Commission to conduct further investigations in preparation for a hearing or for other purposes in connection with its statutory duties, nor shall they be construed to prohibit the use of evidence obtained through such investigations.

5.08 Refusal of Respondent to Cooperate in Conference and Conciliation

Should a respondent fail or refuse to confer with the Commission or its representative of fail or refuse to make a good faith effort to resolve any dispute, the Commission may terminate its efforts to conciliate the dispute. In such event, the respondent shall be notified promptly in writing that such efforts have been unsuccessful and will not be resumed except upon the respondent's written request within the time specified in such notice.

5.09 Time Limitation for Conciliation

Failure to arrive at a satisfactory adjustment within forty-five (45) days after respondent is notified in writing of a finding of probable cause may constitute sufficient reason for the Commission to determine efforts at conference and conciliation to be a failure. For good cause, such determination may be made at an earlier date.

5.10 Satisfaction Adjustment

If the Commission's endeavors under conference, conciliation and persuasion shall be successful, the Executive Director shall mark the case "Satisfactory Adjustment" and notify the parties by mail of the terms of such disposition.

5.11 Violation of Conciliation Agreement

If the Commission determines that the respondent has violated or is violating the terms of the settlement and adjustment, the Commission may take action consistent with the Ordinance which it deems appropriate.

5.12 Administrative Review by Chairperson

(A) Request for Review

(1) A complainant may apply to the Chairperson or the Chairperson's representative, in the event that the Chairperson is unavailable or was the Investigating Commissioner, for an administrative review of the dismissal of his complaint by the Investigating Commissioner, or of the terms of a proposed conciliation agreement approved by the Executive Director. Requests for review shall be in writing and shall be filed at the main Commission office within ten (10) days from the date of receipt of the notice of dismissal of the complaint or of the terms of such proposed conciliation agreement.

(2) The complainant shall be given at least ten (10) days written notice of the time and place of the review hearing. The notice shall be given by personal delivery or by certified mail, return receipt requested, and shall advise the complainant that he must be present at the review hearing and may be accompanied by counsel; **PROVIDED**, that the complainant, at his discretion, may waive his right to appear at a review hearing and elect to submit all objections in writing to the Chairperson. Such written objections shall be filed with Chairperson within ten (10) days of receipt of the complainant's request for review or at such later time as the Chairperson may allow.

(3) If after having received proper notice, the complainant does not appear at the review hearing or fails to timely submit written objections, the complainant shall be deemed to have waived all rights to administrative review by the Chairperson unless it is shown to the satisfaction of the Chairperson that the failure to appear or to submit written objections timely was due to circumstances beyond complainant's control.

(B) Procedures for Review

(1) The Chairperson shall be provided with information in the Commission's file pertaining to the complainant under review. The Chairperson shall consider all such information in arriving at a decision.

(2) The Chairperson shall preside at the review hearing; **PROVIDED**, that if the Chairperson deems his or her attendance impractical due to time, date or location of the hearing, he or she may appoint a member of the Commission staff who has not participated in the initial investigation, decision, or proposed agreement of conciliation to represent him or her at such hearing, but all decisions and action growing out of or upon any such hearing shall be reserved for determination by the Chairperson.

(3) The complainant shall have the burden of showing that the dismissal of the complaint is arbitrary, capricious, or not in accordance with the Law.

(a) If the Chairperson determines that the finding of no probable cause should be reversed, the complaint shall be processed as though an original finding of probable cause had been made.

(b) If the Chairperson determines that the original finding of probable cause should be upheld, the complaint shall be dismissed and the complainant and the respondent shall be sent notice of such finding by certified mail, return receipt requested.

(4) The complainant shall have the burden of showing that the proposed conciliation agreement fails to provide an adequate remedy.

(a) If the Chairperson and/or the Executive Director determines that the proposed conciliation agreement is not satisfactory, the Chairperson and/or the Executive Director shall inform the Investigating Commissioner which element of the conciliation agreement are unsatisfactory and the Investigating Commissioner shall attempt further conciliation accordingly.

(b) If the Chairperson and/or the Executive Director determines that the proposed conciliation agreement is satisfactory, the complainant and respondent shall have five (5) days after such notice to sign the original proposed conciliation agreement. If, at the end of such time, the complainant and respondent have not signed the conciliation agreement, the complaint may be dismissed or proceeded with in accordance with Section 5.06.

SECTION 6 NOTICE OF HEARING

6.01 Issuance and Service of Public Hearing

After a finding of probable cause to credit the allegations of the complainant and in case of failure to eliminate the alleged unlawful discriminatory practice or act by conference, conciliation and persuasion or, in advance thereof, if in the judgment of the Commission circumstances so warrant, the Commission shall cause to be issued and served in the name of the Commission, a written notice of hearing together with a copy of the verified complaint as the same may have been amended. Service of said notice and complaint upon the respondent should be in the manner provided by Law for the service of summons in civil action and shall be served at least thirty (30) days prior to the time set for the hearing. Service upon other parties shall be by personal delivery or certified mail, return receipt requested.

6.02 Contents of Notice of Public Hearing

(A) The notice of hearing shall state the time and place of the hearing; inform the respondent that he may file a written verified answer to the complaint; and that a failure to answer may be deemed an admission to the allegations of the complaint.

(B) The respondent shall be advised in writing of the right to appear in such hearing in person and/or be represented by an attorney. If an attorney has previously appeared on behalf of the respondent, a copy of such notice of hearing and complaint as the same may have been amended shall be furnished to said attorney.

(C) Notice of hearing shall contain the name of members of the Hearing Panel who shall conduct such hearing, or in lieu thereof, a statement that the public hearing will be conducted by a hearing panel to be designated subsequently by the Commission's Chairperson or Executive Director.

6.03 Extension of Time

Upon application, the Chairperson or Executive Director, for good cause shown, may extend the date on which a hearing has been set.

6.04 Copies of Pleadings to All Parties

Copies of all pleadings or papers filed in connection with a public hearing shall be sent to all parties and/or their attorneys and the Hearing Examiner by the party filing such pleadings or papers.

SECTION 7 ANSWER

7.01 Time of Filing

The respondent, against whom a verified complaint as the same may have been amended, is filed and upon whom a notice of hearing and a copy of such complaint have been served, may file a written answer in person or through an attorney within ten (10) days from the serving of such complaint and notice of hearing. Upon application in writing made to the Chairperson or Executive Director prior to the end of said ten (10) day period, the Chairperson or Executive Director may, for good cause shown, extend the time in which the answer may be filed.

7.02 Place and Manner of Filing

The answer shall be filed in triplicate at the office of the Commission. The filing shall be by personal delivery or by certified mail, return receipt requested.

7.03 Form of Answer

(A) The answer shall be in writing, the original being signed and verified by the respondent or respondent's attorney. The answer shall contain the post office address of the respondent and if he is represented by an attorney, the name and mailing address of said attorney.

(B) The answer shall contain a general or specific denial of each and every allegation of the complaint controverted by the respondent or a denial of any knowledge or information thereof sufficient to form a belief and a statement of any matter constituting a defense.

(C) Any allegation in the complaint which is not denied or admitted in the answer, unless the respondent shall state in the answer that he is without knowledge or information sufficient to form a belief, may be deemed admitted.

(D) Any allegation of new matter contained in the answer shall be deemed denied by the complaint without the necessity of a reply being filed, unless otherwise ordered by the Chairperson.

7.04 Amendment of Answer

The answer or any part thereof may be amended as a matter of right at any time before the hearing and thereafter at the discretion of the Hearing Commissioner on application duly made thereof. An original with two (2) copies of the amended answer shall be filed with the Commission.

7.05 Amendment of Answer Upon Amendment of Complaint

In any case where a complaint has been amended, the respondent shall have the opportunity to amend his answer within such period as may be fixed by the Chairperson or Executive Director. The failure to amend shall not constitute an admission to those new allegations of fact contained in the amended complaint.

7.06 Failure to File Answer

The hearing panel may proceed; not withholding any failure of the respondent to file an answer within the time provided herein, to hold a hearing may make its finding of fact and enter its order upon the testimony taken at the hearing.

7.07 Failure to Answer Set Aside

Upon application prior to hearing, the Chairperson may for good cause shown set aside a failure to answer. Upon application at the hearing, the Hearing Commissioner may for good cause set aside a failure to answer.

7.08 Service of Answer

The Commission shall, within ten (10) days after the date of filing an answer or amended answer but in any case not less than five (5) days before the date set for hearing, serve a copy of such answer or amended answer on the complainant by personal delivery or certified mail, return receipt requested.

SECTION 8 HEARINGS

8.01 Public Hearing

All hearing or the Hearing Panel shall be open to the public except in extraordinary circumstances where the Commission shall determine, with the consent of the parties to the hearings, that substantial justice would be effectuated thereby.

8.02 Place of Hearing

The place of the hearing will be designated by the Chairperson or the Executive Director.

8.03 Joinder

Two (2) or more proceedings against the same respondent arising out of the same set of circumstances, or two or more proceedings by the same complaint against two (2) or more respondents arising out of the same set of circumstances, may be consolidated by the Commission at its discretion for the purpose of hearing.

8.04 Hearing Panel

(A) Hearing shall be conducted by one (1) Hearing Commissioner appointed by the Chairperson and a Hearing Examiner designated by the Executive Director with the approval of the Commissioners. The Hearing Examiner shall preside and conduct the hearing. The Hearing Commissioner shall participate fully in such hearing.

(B) Any person appointed to serve on a Hearing Panel who has any interest in the case at issue, or personally knows the complainant or respondent shall disqualify himself to serve on the panel.

(C) Either party may file a motion in good faith alleging prejudice, which the Hearing panel shall determine as part of the record and decision in the case prior to the taking of any evidence.

(D) No Commissioner who served as Investigating Commissioner shall participate in the hearing except as a witness, nor shall he participate in deliberations of the Commission in such case *unless* such Commissioner shall be required for a quorum of the Commission.

8.05 Replacement of Member of Hearing Panel

For good cause, unless prejudice be shown by a party, the Commission may replace a member of the Hearing Panel at any time.

8.06 Appearances

(A) Complainant. The complainant shall be present at the hearing and may be represented by counsel.

(B) Respondent. The respondent may appear at the hearing with or without counsel, cross-examine witnesses and, if an answer has been filed or the default in answering has been set aside for good cause shown, may submit oral testimony and other evidence. Failure of a respondent to appear shall not prevent presentation of the case before the Hearing Panel or the entering of a final order.

(C) Commission. The case in support of the complaint shall be presented before the Hearing Panel by the Commission's attorney or agent who shall have full rights of cross-examination and rebuttal of any witness called by the respondent, complainant, or intervening party. With the consent of the Commission, the case in support of the complaint may be presented solely by the complainant's attorney.

(D) Interested Parties. Any person not initially joined in the proceeding shall be permitted to petition the Chairperson for intervention by counsel upon filing of a motion within ten (10) days of the hearing which shall set forth the grounds for said intervention. A petition to intervene may be granted for such purposes and to such extent as the Chairperson shall determine.

8.07 Representation by an Attorney

(A) Appearance. If any party designates an attorney at law to represent him before the Commission, such attorney shall file a notice of appearance with the Commission. The filing of an answer executed or prepared by an attorney shall constitute a notice of appearance. An

attorney-at-law who appears for a party to the proceeding at any stage therein shall be deemed to remain that party's attorney throughout the proceeding until:

- (1) The party represented files with the Commission a written revocation of the attorney's authority;
 - (2) The attorney files with the Commission a written statement of his withdrawal from the case;
 - (3) The attorney states on the record at a Commission hearing that he is with-drawing from the case;
 - (4) The party represented states on the record at a Commission hearing that is revoking the attorney's authority; or
 - (5) The Commission receives notice of the attorney's death or disqualification.
- (B) Notice to Attorneys. Copies of all written communications or notices in the matter directed to the party shall be sent either to the attorney solely or to both the party and his attorney.
- (C) Effectiveness of Service. Service of any document or paper (except subpoenas and subpoenas duces tecum) in the matter on said attorney shall be deemed service on the party he represents provided, however, that the Commission may, in addition, serve any document or paper on the party said attorney represents.

8.08 Motions Before or After Hearing

All motions other than those made during a hearing shall be in writing and shall state briefly the order or relief applied for and the grounds for such motion. Any such motion shall be filed with the Chairperson and a copy thereof shall be served at the time upon the Commission's attorney and other parties to the hearing. Answering statements, if any, shall be filed in writing with the Chairperson within five (5) days (exclusive of Saturdays, Sundays, and official holidays) after service of the motion upon the party filing the answering statement, and a copy thereof shall be served within the same period upon the Commission's attorney and other parties to the hearing. Such motions shall be decided by the Chairperson or at the Chairperson's discretion, by the Hearing Examiner, without oral argument thereon, unless the Chairperson or Hearing Examiner, as appropriate, shall determine to hear oral argument, in which case he shall notify the parties of such fact and of the time and place for such oral argument.

8.09 Pre-hearing Conference

(A) Purpose. A pre-hearing conference may be held at the discretion of the Hearing Examiner preparatory to any hearing. The pre-hearing conference shall be an informal proceeding conducted fairly and expeditiously by the Hearing Examiner for the purpose of considering:

- (1) The simplification of issue;
- (2) The necessity of desirability of amendments to the Pleadings;
- (3) The possibility of obtaining admissions of fact and documents which will avoid unnecessary proof;

- (4) The limitation of the number of expert witnesses; and
- (5) Such other matters as may aid in the disposition of the hearing.

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

8.10 Submission of Documentary Evidence in Advance

When practicable, the Hearing Examiner may require:

- (A) That all documentary evidence which is to be offered during the taking of evidence be submitted to the Commission and to the other parties to the proceeding sufficiently in advance of taking of evidence to permit study and preparation of cross examination and rebuttal evidence;
- (B) That documentary evidence not submitted in advance, as may be required by sub-division (A), be not received in evidence in the absence of a clear showing that the offering party had good cause for his failure to produce the evidence sooner;
- (C) That the authenticity of all documents submitted in advance in a proceeding in which such submission is required, be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.

8.11 Subpoenas

(A) Issuance. Subject to the pertinent provisions of the Law, the Commission issue subpoenas and subpoenas duces tecum either at its own instance or upon written application of a party to the hearing whenever necessary to compel the attendance of witnesses and the introduction of books, records, correspondence, documents, papers or any other evidence which relates to any matter before the Commission. The issuance of such subpoenas duces tecum at the instance of a party other than the Commission shall depend upon a showing of the necessity therefore.

(B) Fees. When a subpoena is issued at the instance of a party to the hearing other than the Commission, the cost of service, witness and mileage fee shall be borne by the party at whose request the subpoena is issued. Where the subpoena is issued at the insistence of the Commission, the cost of such service shall be borne by the Commission. Such witness and mileage fees shall be the same as are paid witnesses in the courts of the State. All requests by parties other than the

Commission for subpoenas duces tecum shall contain a statement acknowledging that the requesting party agrees to pay such fees.

(C) Failure to Obey Subpoena. Subpoenas and subpoenas duces tecum shall be enforced as provided in Section 29A-5-1 (b) of the West Virginia Code.

8.12 Procedure of Hearing

(A) Subject to the provisions of these regulations, the Hearing Examiner shall have full authority and discretion to control the procedure of the hearing, to admit or exclude testimony or other evidence and to rule upon all motions and objections except where ruling on such motion is expressly reserved to the Commission. The Hearing Examiner shall make full inquiry into all the facts in issuance and shall obtain a full and complete record of all facts necessary for a fair determination of the issues.

(B) The Hearing Examiner may call and examine witnesses direct the production of papers or other matter present in the hearing room, and introduce the same into the record of the proceeding. Subject to the provisions of the Law, the Hearing Examiner may issue subpoenas and subpoenas duces tecum in furtherance of his duties and obligations.

8.13 Limitation on Hearing Examiner.

On any question which may continue a hearing from day to day or adjourn it to a later date or to a different place by announcement thereof at the hearing or by appropriate notice to all parties.

8.14 Continuation and Adjournments

The Hearing Examiner may continue a hearing from day to day or adjourn it to a later date or to a different place by announcement thereof at the hearing or by appropriate notice to all parties.

8.15 Motions and Objections at Hearings

Motions made during a hearing and objections with respect to the conduct of a hearing, including objections to the introduction of evidence, shall be stated orally and shall, with the ruling of the Hearing Examiner, be included in the stenographic report of the hearing.

8.16 Waiver of Objections

Any objections not duly urged before the Hearing Examiner or Chairperson, as appropriate, shall be deemed waived unless the failure or neglect to urge such objection shall be excused for cause by the Hearing Examiner or Chairperson, as appropriate.

8.17 Separation of Witnesses

The Hearing Examiner may, within his discretion or upon motion of a party, order the separation of witnesses.

8.18 Witnesses

No testimony shall be received from a witness except under oath or affirmation.

8.19 Rules of Evidence

(A) Pursuant to Chapter 29A Subsection 5-2 of the West Virginia Code, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the circuit courts of the State shall be followed. When necessary, to ascertain facts not reasonably susceptible under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The Commission shall be bound by the rules of privilege recognized by Law.

(B) When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The Hearing Examiner may in his discretion, either with or without objection, exclude in admissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered. Any party to the hearing may vouch for the record as to any excluded testimony or other evidence.

(C) All evidence, including papers, records, staff memoranda, and documents in possession of the Commission, of which it desires to abet itself, may be offered and made a part of the record of the hearing.

(D) Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

(E) Written stipulations of fact may be introduced in evidence if signed by the person sought to be bound thereby or by his attorney. Oral stipulations may be made in the record of hearing. The Commission expects the parties to stipulate evidence to the fullest extent to which complete or qualified argument can be reached, including all material facts that are not or should not be in dispute.

8.20 Depositions

Evidentiary depositions may be taken and read as in civil actions in the circuit courts of the State by the Commission, or by any party to a hearing.

8.21 Issues Not In the Pleadings

When issues not raised in the complaint, as amended or supplemented, or answer, as amended, are heard by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment 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 of the hearing of these issues. If evidence is objected to at the hearing on the ground that it is not within the issues made by the pleadings, the Hearing Examiner 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 admission of such evidence would prejudice him in maintaining his defense on the merits. The Hearing Examiner may grant a continuance to enable the objecting party to meet such evidence.

8.22 Oral Argument, Briefs and Findings

- (A) The Hearing Examiner shall permit the parties or their attorneys to present oral arguments at the hearing and to file briefs within such time limit as the Hearing Examiner may determine subject to the time limitation set forth in subsection 8.22 (B) below. Oral argument shall not be included in the transcript of testimony unless the Hearing Examiner so directs.
- (B) At the close of the hearing, the Hearing Examiner may order or shall permit the parties to submit a suggested decision to the Commission and the Hearing Examiner within such time limits as the Hearing Examiner may determine, subject to the time limitation set forth in subsection 8.22(C) below.
- (C) The Hearing Examiner shall submit a proposed order and decision accompanied by findings of fact and conclusions of Law to the Commission and to all parties to the hearing within one-hundred eighty (180) days of the completion of the hearing. The parties affected shall be given fifteen (15) days within which to file, in written form only, exceptions of said proposals and findings and present, in written form only, argument in support of said exceptions to the Commission. In the event that the Hearing Examiner shall fail to submit such decision and findings within the above one-hundred eighty (180) day time limitation, which failure to submit shall be considered a proposed finding of no unlawful discriminatory practice and a denial of all allegations contained in the complaint concerned in the hearing. The Commission shall then proceed to enter its own findings and decision based upon the record of all testimony, exhibits, briefs and arguments submitted by the parties in connection with the hearing, pursuant to Section 9 below.

8.23 Improper Conduct

- (A) The Hearing Examiner may exclude from the hearing room or from further participation in the proceedings any person who engages in improper conduct before him except a party to the proceeding, his attorney of record or a witness engaged in testifying.

(B) Television, newsreel, motion picture, still or other cameras may be operated in the hearing room while the public hearing is in progress only with the permission of the Hearing Examiner. No lights or other devices may be used in connection with such cameras (other than those employed to light the hearing room). Mechanical recording devices other than those provided by the Commission or at its direction may be operated in the hearing room during the course of the hearing only with the permission of the Hearing Examiner.

8.24 Transcript of Testimony - The Commission shall cause the hearing to be recorded by a reporter or by an electronic recording device. If an electronic recording device is utilized, the respondent shall be notified and given the opportunity to provide its own reporter at the hearing at the respondent's own expense. The Commission's copy of the transcript shall be available to all parties for examination at all reasonable times without cost.

If any parties wish a copy of the transcript for their own personal use, such copies may be purchased from the court reporter or other person responsible for preparing the transcript.

8.25 Reopening Hearing

At any time after a hearing has closed, but prior to a final determination, the Chairperson may on his/her own motion or upon motion by any party, reopen the proceeding to receive further evidence or argument.

8.26 Reimbursement of Hearing Examiners

Subsequent to submission of proposed findings and decision in a public hearing, a Hearing Examiner shall submit a bill for services rendered to the Commission. In the event that a Hearing Examiner has failed to submit findings and a decision within the time limitation contained in Subsection 8.22 above, reimbursement shall be limited to the number of hours actually spent by that Hearing Examiner in conducting the public hearing. In all cases the final amount of reimbursement to any Examiner shall be subject to amendment and final approval of the Commission.

SECTION 9. TRANSCRIPT

9.01 Transcript of the Record

The record of the proceedings before the Commission shall consist of the complaint and amended complaint, if any answer, notices of hearing, written applications, stipulations, motions, orders, transcript of the record of the hearing, exhibits, depositions, the final order, and along with the final order and any modifications thereof.

Section 10 FINAL ORDERS

10.01 Contents of Order

An order of the Commission issued after hearing shall set for the Commission's findings of fact, conclusions of Law, its decision and, in its discretion, an opinion containing the reasons for said decision.

10.02 Issuance of Order

(A) If upon all the testimony, evidence and record of the hearing, the Commission shall find that the respondent has engaged in or is engaging in any unlawful discriminatory practices or acts as defined in the Law, the Commission shall issue an order requiring such respondent to cease and desist from such unlawful discriminatory practice or act and to take such affirmative action, as in judgment of the Commission, will effectuate the purpose of the Law, which shall include a requirement for a report from time to time of the manner and extent of compliance.

(B) In addition to the remedies outlined in (1) above, the Commission may:

- (1) Assess against a respondent an award of damages to the victim or victims of the discrimination for whatever amounts may be shown to have resulted from such discrimination, including attorney's fees. Evidence to show such monetary amounts may be in the form of documentary evidence or testimony.
- (2) Assess against a respondent an award of back pay to the victim or victims of the discrimination as outlined in Section 10 of the Human Rights Law. For cases involving discriminatory acts which occurred after the effective date of the Human Rights Law, July 1, 1967, the period for which back pay shall be awarded shall commence with the date of the discriminatory practice or act and end when back pay is actually tendered by the respondent. For cases involving discriminatory practices or acts which occurred before the effective date of the Charleston Human Rights Law, the effects of such discriminatory acts continuing to a time after the effective date of the Human Rights Law, July 1, 1967, and end when such back pay is actually tendered by the respondent. Interest may also be included in such award of back pay as the Commission may determine.
- (C) If upon all the testimony, evidence and record of the hearing the Commission shall find that the respondent has not engaged in any unlawful discriminatory practice as defined in the Law, the Commission shall issue an order dismissing the complaint as to such respondent.

10.03 Preparation in Drafting of Final Order

The Commission may utilize the services of its attorney in preparing and drafting its final order.

10.04 Service of Order

Copies of orders shall be personally delivered or sent by certified mail, return receipt requested, or by such means as are reasonably calculated to give actual notice to the complainant, respondent, city solicitor, interveners and to such other public officers as the Commission may deem proper. Such order shall be accompanied by a notice of statutory right to judicial review.

10.05 Filing of Order

All orders rendered after a hearing shall be filed at the central office of the Commission and shall be open to public inspection during regular office hours of the Commission.

10.06 Reconsideration of Final Order

(A) Motion. Within ten (10) days after being served with the final order of the Commission after a public hearing, any party may serve and file a motion for reconsideration by the Commission. The motion shall identify the points the party desires to have reconsidered and shall fully state the reasons for reconsideration.

(B) Finality for Judicial Review. When a motion for reconsideration has been filed, the order of the Commission shall not be deemed final for purposes of appeal until the Commission has served its ruling on the motion.

(C) Reconsideration Not Necessary for Appeal. It shall not be necessary to file a motion for reconsideration in order to seek judicial review.

SECTION 11 GENERAL INVESTGATIONS

(A) The Commission may, at its discretion, conduct such general investigations an hearings into the problems of discrimination as it deems necessary or desirable and may study and report upon the problems of the effect of discrimination on any field of human relationships.

(B) In pursuing its functions authorized by the Law and by this section, the Commission may exercise its full powers of discovery as set forth in the Law and in these regulations.

SECTION 12 RULEMAKING

(A) Petitions. Any interested person may petition the Commission in writing for the issuance, amendment, or repeal of a rule of regulation. Such petition shall state the rule or regulation proposed to be issued, amended, or repealed, together with a statement of grounds in support of such petition.

(B) Action on Petition. Upon the filing of such petition, the Commission shall consider the same and may thereupon either grant or deny the petition in whole or in part, conduct an appropriate proceeding thereon, or make other disposition of the petition. Should the petition be denied in whole or in part, prompt notice shall be given of the denial accompanied by a simple statement of the grounds unless the denial is self-explanatory.

12.02 Requests for Special Notice of Rulemaking.

Requests for advance notice of rule making proceedings, as provided S 29A-3-2 of the West Virginia Code shall be in writing and shall give the name of the requesting person or organization, and the address to which the notice is to be sent. Such request will be honored for a period of two (2) years from the date of the request, and may be renewed by written notice to the Commission containing the information required for the original request.

12.03 Declaration Rulings by Commission

(A) Petitions. Petitions for declaratory ruling pursuant to Chapter 29A (4) (1) of the West Virginia Code shall contain the following:

- (1) A statement of the question on which the declaratory ruling is sought.
- (2) A full statement of the facts giving rise to the questions.
- (3) A statement of the basis for the petitioner's interest in the question.

(B) Confirmation Investigation. In order to determine the full facts giving rise to the question, the Commission may require the petitioner to submit additional information and it may make an independent investigation.

(C) Consideration and Disposition. When the Commission is satisfied that it understands the question on which the declaratory ruling has been sought, it shall:

- (1) Issue a non-binding declaratory ruling; or
- (2) Notify the petitioner that no declaratory ruling will be issued; or
- (3) Set a time and place for hearing argument on the question, notify the petitioner of them, and issue either a binding or non-binding ruling after the hearing.

(D) Forms. Petitions for declaratory ruling where possible, shall be upon forms prepared by the Commission, blanks of which shall be supplied by the Commission upon request.

12.04 Guidelines.

In order to educate the public and insure compliance with the Charleston Human Rights Ordinance, the Commission may from time to time promulgate guidelines for various areas of employment, housing, and public accommodations as covered by the Law. Such guidelines shall be administered by the Commission staff and shall become a part of these rules and regulations by reference when adopted by the Commission. All guidelines in existence at the time of the adoption of these rules and regulations shall also be incorporated by reference. All guidelines so promulgated by the Commission shall be contained in an appendix to the rules and regulations.

SECTION 13 **CERTIFICATION OF DOCUMENTS AND RECORDS**

13.01 The Chairperson, Executive Director or such other person as may be designated or authorized by the Commission is authorized to certify all documents of records which are part of the files and records of the Commission.