

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History: Chapter Ind 89 as it existed on October 31, 1969, was repealed and a new chapter Ind 89 was created, Register, November, 1969, effective November 1, 1969; chapter Ind 89 as it existed on October 31, 1981 was repealed and a new chapter Ind 89 was created effective November 1, 1981.

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, October, 1981, No. 310, eff. 11-1-81.

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) "Age" in reference to protected classes of persons covered by the act means 18 years of age or older.
- (3) "Complainant" means the person or persons who files a complaint stating that an act of discrimination has occurred.
- (4) "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.
- (5) "Department" means the department of industry, labor and human relations.
- (6) "Division" means the equal rights division of the department.
- (7) "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.
- (8) "Licensing or chartering agencies" means those regulatory agencies established under state law to license persons to perform activities which are covered by the act.

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(9) "Marital status" means the state of being single, married, separated, widowed or divorced. Nothing contained in this chapter is intended to contradict the prohibition against cohabitation under s. 944.20(3), Stats. or bigamy under s. 944.05, Stats.

(10) "Person" means one or more individuals, partnerships, associations, corporations, joint stock companies, trusts, unincorporated organizations, trustees or trustees or receivers in bankruptcy or other entity subject to s. 101.22, Stats.

(11) "Probable cause" means that there are sufficient facts and circumstances which, by themselves, would lead a reasonable person to believe that a full hearing on the complaint would establish the fact of unlawful discrimination by a fair preponderance of the evidence.

(12) "Respondent" means the person or persons named in a complaint as the person or persons who have committed or who are responsible for an alleged act of discrimination.

(13) "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, October, 1981, No. 310, eff. 11-1-81.

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. Such 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 for such activities and 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) Results of each test for potential discrimination shall be submitted to the department in written form by those persons who conducted the test.

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

(3) The department shall 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, October, 1981, No. 310, eff. 11-1-81.

Ind 89.03 Complaint. (1) **WHO MAY FILE.** (a) Any person or persons claiming to be aggrieved by an alleged discriminatory practice or act contrary to the provisions of the act, may in person or through a duly authorized representative, make, sign and file a complaint with the division.

(b) The department may make and file complaints on its own motion as provided in s. 101.22 (4) (b), Stats.

(c) 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.

(2) **WHERE TO FILE.** Complaints shall be filed in writing with an office of the division in either Madison or Milwaukee. Complaint forms may be obtained at any office of the division or any job service office.

(3) **ASSISTANCE OF DEPARTMENT.** Appropriate assistance in filling out forms shall be made available by the department to the person or persons filing the complaint and to the person or persons responding to the complaint. 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.

(4) **FORM.** Complaints shall be in writing and signed before a notary public on a form supplied by or acceptable to the department.

(5) **CONTENT.** Each complaint shall contain:

(a) The full name and address of the person making the complaint.

(b) The full name and address of the person against whom the complaint is made.

(c) A plain and concise statement of the facts constituting the alleged unlawful discriminatory practice or act.

(d) The date or dates of the alleged unlawful discriminatory practice or act.

(6) **TIME OF FILING.** A complaint may be filed as soon as possible after the date of the alleged discriminatory practice or act, but it shall be filed no later than 300 days after the date of the alleged unlawful discriminatory practice or act.

(7) **JURISDICTIONAL REVIEW.** (a) The division shall conduct a review of any complaint filed with the division to ascertain whether the complaint

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fulfills the minimum jurisdictional requirements of s. 101.22, Stats., including but not limited to whether or not the complaint alleges an action which constitutes discrimination under the act, whether the complaint has been filed within 300 days of the alleged discriminatory act and whether the respondent or the transaction are covered under the act.

(b) If the complaint fails to meet the minimum jurisdictional requirements, the division shall so notify the complainant in writing by certified mail, return receipt requested, along with an order dismissing the complaint. Upon the written request of the complainant within 10 days of the receipt of the order, the division shall review the finding of no jurisdiction.

(8) **WITHDRAWAL, AMENDMENT AND SUPPLEMENTAL COMPLAINTS.** (a) A complaint may be withdrawn by the complainant at any time.

(b) A complaint may be amended by the complainant at any time before the initial determination and final complaint are served on the respondent. After the service of the initial determination and final complaint upon the respondent the complainant may not amend the substance of the complaint unless all the parties stipulate to the amendment in writing.

(c) A complainant may file a supplemental complaint at any time prior to the hearing if the supplemental complaint alleges that the respondent has violated s. 101.22(4m), Stats., in response to the initial complaint.

(d) Any amended or supplemental complaint shall be investigated by the division.

(9) **NOTICE TO RESPONDENT.** 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 89.02. 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 receipt of the notice to the allegations in the complaint and further stating that if the respondent fails to answer in writing the allegations in the complaint the division will make an initial determination as to whether or not discrimination has occurred based only upon the information supplied by the complainant and that uncovered in the division's investigation. All notices shall be sent by certified mail, return receipt requested.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

Ind 89.04 Investigation. The division shall promptly investigate all complaints. In addition to notifying the respondent as provided in s. Ind 89.03(9), the division shall make every attempt to conduct a complete investigation and obtain information from all interested parties.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

Ind 89.045 Cooperation of complainant. The department may dismiss the complaint if the person who filed the complaint fails to respond within 10 days from the date of receipt to any correspondence from the department concerning the complaint provided that such correspon-

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dence was sent by certified mail, return receipt requested to the last known address of the complainant.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

Ind 89.05 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) 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) There is sufficient reason to believe, based on a limited investigative inquiry, 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, an expedited investigative process shall immediately be put into effect by the department.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

Ind 89.06 Initial determination. (1) At the conclusion of the investigation, the division shall make an initial determination in writing as to whether or not there is probable cause to believe that discrimination has been or is being committed.

(2) If the initial determination of the division is that there is probable cause to believe that discrimination has been or is being committed, the division shall serve, by certified mail, return receipt requested, upon the parties and their attorneys of record the initial determination and final complaint accompanied by a notice requiring the respondent to answer the final complaint in writing within 10 days from the date of the receipt of the notice. The notice shall also inform the parties that they will be contacted by a conciliator from the division after the respondent's answer is received by the division and that the conciliator will attempt to assist the parties in resolving their dispute without a formal hearing. The notice shall further state that upon the failure of the parties to resolve the dispute in the conciliation process or upon the waiver of the conciliation process by both parties in writing, the matter shall be set for a hearing. Service of the notice, and accompanying initial determination and final complaint shall be made upon the complainant and respondent named in the complaint by certified mail, return receipt requested.

(3) If the initial determination of the division is that there is no probable cause to believe that an act of discrimination has occurred, the division shall dismiss the complaint and promptly notify the complainant and the respondent in writing of the dismissal. The notice shall state the reasons for the dismissal and inform the complainant of the right to appeal under this section.

(4) If a complainant disagrees with the department's finding of no probable cause, the complainant may within 10 days of the date of receipt of the initial determination file with the division a request for a hearing to review the no probable cause finding by the investigator. This finding shall be reviewed by a hearing examiner at a hearing which shall be limited to the issue of whether probable cause exists. At the conclu-

sion of the hearing the hearing examiner may take one of the following actions:

(a) Remand the matter to the investigator for further investigation. This may be done only when the evidence presented at the no probable cause hearing demonstrates a significant omission in the investigator's findings of facts.

(b) Find that probable cause exists and notify the parties as provided in sub. (2).

(c) Affirm the investigator's decision that no probable cause exists. In this case the hearing examiner shall notify the parties of his or her decision in writing along with a notice that the complainant may appeal this decision to the labor and industry review commission by filing a written petition for review with the division office in Madison or Milwaukee within 21 days from the date of receipt of the decision of the hearing examiner. The decision shall contain a statement of the reasons for the decision and shall be sent by certified mail, return receipt requested.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

Ind 89.07 Conference, conciliation and persuasion. (1) The division shall attempt to resolve the dispute between the complainant and the respondent by conference, conciliation and persuasion unless the parties waive the conciliation period in writing. No conciliator may recommend any settlement to the parties until the conciliator has contacted both parties and learns both parties' ideas about the settlement of the dispute.

(2) If, as a result of this conference, conciliation or persuasion, the division is able to resolve the dispute it shall prepare a written conciliation agreement which shall state all the measures to be taken by any party.

(3) A conciliation agreement is one in which the respondent may agree to take certain actions described in the agreement or agree to pay a monetary amount to the complainant, and in which the complainant agrees not to bring any further action against the respondent concerning some or all of the matters described in the complaint. The conciliation agreement may contain the following clauses:

(a) A description of the matters covered by the agreement, including a reference to the original complaint;

(b) A statement that in signing this agreement the respondent does not admit to any violation of s. 101.22, Stats.;

(c) The respondent's agreement to perform certain actions, including but not limited to an agreement to refrain from engaging in any discrimination prohibited by s. 101.22, Stats., in the future and may include an agreement to pay a monetary amount to the complainant;

(d) The respondent's agreement not to engage in any retaliatory action in violation of s. 101.22 (4m), Stats.;

(e) The complainant's agreement not to take further legal action against the respondent concerning any matters which are resolved in the agreement;

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(f) The effective date of the agreement;

(g) The parties' agreement to the division's right to determine whether or not the agreement is being complied with, to issue an order of compliance at the time the agreement is signed, and to dismiss the complaint if the agreement is complied with; or

(h) Other clauses agreed upon by both parties and the department.

(4) Upon verification of compliance by both parties with the terms of the agreement, the complaint shall be dismissed by the division.

(5) If the division determines that a party is not complying with the terms agreed upon in the conciliation agreement, it shall issue an order of compliance and may request that the attorney general seek enforcement of the agreement in circuit court.

(6) If the parties do not agree to resolve their dispute by entering into a conciliation agreement, the division shall schedule a hearing on the matter and notify the parties as provided in s. Ind 89.075.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

Ind 89.075 Notice of hearing. (1) A hearing shall be scheduled upon the failure of the parties to resolve their dispute by entering into a conciliation agreement or upon the waiver of the conciliation period by both parties in writing. The division shall notify, by certified mail, return receipt requested, each party and their attorneys of record in writing of the date of the hearing which shall be not less than 10 days from the date of receipt of the notice.

(2) The hearing shall be held in the county where the alleged act of discrimination occurred.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

Ind 89.08 Formal answer. (1) **CONTENT.** The formal answer shall be a written statement by the respondent for the hearing which replies to the allegations in the final complaint and those in any supplemental complaint. The answer shall contain the respondent's current address. In the answer the respondent shall admit any allegations in the final complaint that are true, specifically deny each and every allegation of the final complaint that the respondent disagrees with, deny any allegation for which the respondent does not have enough knowledge or information to form an opinion about the truth or falseness of the allegation and state any matter constituting a defense to the complainant's charges.

(2) **FILING OF THE FORMAL ANSWER.** The formal answer shall be filed with the division within 10 days from the date of receipt of the initial determination and final complaint. The department shall serve a copy of the answer on the complainant and the complainant's attorney.

(3) **EFFECT OF ANSWER; ISSUES AT HEARING.** The final complaint and the formal answer shall determine the issues to be heard at a hearing on the matter.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

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Ind 89.09 Prehearing conference. In the interest of facilitating the progress of the hearing, the hearing examiner may schedule a prehearing conference for the purpose of determining whether the complainant and respondent can agree to the issues to be resolved at the hearing, agree to any uncontested facts and agree to jurisdiction and other procedural issues.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

Ind 89.10 Subpoenas and motions; prehearing discovery. (1) **SUBPOENAS AND SUBPOENAS DUCES TECUM.** The hearing examiner may issue subpoenas and subpoenas duces tecum on the hearing examiner's own motion or upon proper application by any party, whenever necessary to compel the attendance of a witness at a prehearing deposition or at the hearing or for the prehearing discovery or the introduction at the hearing of books, records, correspondence, documents or other evidence which relate to the proceeding. Service shall be in the manner prescribed by the law for the service of subpoenas.

(2) **FAILURE TO OBEY SUBPOENAS.** Upon the failure of any person to obey a subpoena or a subpoena duces tecum issued by the hearing examiner, the matter may be referred to the attorney general's office for enforcement pursuant to s. 885.12, Stats.

(3) **MOTIONS.** (a) Motions and objections made during a hearing may be stated orally and shall be included in the record of the hearing. The hearing examiner's ruling on any motion or objection shall also be included in the record. All other motions shall be in writing stating briefly the relief requested and the grounds why the person making the motion is entitled to the relief. An original and 3 copies of the motion and any answer to the motion shall be filed with the hearing examiner by the person making the motion or answer. The hearing examiner shall serve prehearing motions on the other parties. All motions shall be decided without further testimony or argument unless it is requested by the hearing examiner.

(b) **MOTION FOR CLARIFICATION AND SIMPLIFICATION.** A motion for clarification and simplification may be requested by a respondent within 10 days after the receipt of the final complaint and the notice of hearing, where the respondent cannot reasonably be required to either make an answer to the complaint or prepare for hearing because of the vagueness or ambiguity of the complaint. The motion shall point out the defects complained of and the details desired. If the motion is granted, 10 days shall be allowed within which to cure the deficiencies indicated.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

Ind 89.11 Disqualification of hearing examiner. A request for the removal of a hearing examiner from a particular hearing may only be made by filing an affidavit of personal bias or other disqualification as set forth in s. 227.09 (6), Stats. It shall be filed with the hearing examiner, whose decision upon the affidavit shall become part of the record of the hearing.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

Ind 89.12 Hearings. (1) **PROCEDURE.** Hearings shall be conducted in conformity with s. 101.22, Stats., these rules and, where not inconsistent, with the provisions of ch. 227, Stats.

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(2) **APPEARANCE OF PARTIES.** Either party may appear at the hearing, may be allowed to call, examine and cross-examine witnesses, and may introduce papers, documents or other evidence, in person, by counsel or other representative.

(3) **ACCELERATION OF HEARING.** The parties may consent by written stipulation that the hearing be held within less than 10 days after the service of the complaint and notice of hearing.

(4) **POSTPONEMENTS AND CONTINUANCES.** (a) All requests for postponements for reasons which are known, or could have been known when the notice of hearing is received by the parties, shall be made to the assigned hearing examiner within 10 days of receipt of the notice. Postponements shall not be granted for the mere convenience of the parties or their attorneys.

(b) Unless there is a prior arrangement, once a hearing has commenced, it will not be continued at a later date because a witness, who not under subpoena, is unavailable on the day of the hearing or because counsel or representative has another engagement elsewhere and does not desire to proceed further on the day for which the hearing is set.

(5) **FAILURE TO APPEAR.** (a) If the complainant fails to appear in person or by representative at a hearing, the hearing examiner shall issue an order dismissing the complaint.

(b) If the respondent fails to appear in person or by representative at the hearing, the hearing shall proceed as scheduled, and the hearing examiner shall issue a decision based upon the evidence in the record.

(c) However, if the party who failed to appear shows good cause for the failure to appear in writing within 10 days of the date of the original hearing, the hearing examiner shall reopen the proceeding.

(6) **REMAND.** Prior to the commencement of the hearing on the merits, and after reviewing the file, the hearing examiner may remand the matter to the investigator for further investigation. This may be done only when it appears that there was a significant omission in the investigator's findings of facts.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

Ind 89.13 Record of proceedings. (1) A stenographic, electronic or other record of oral testimony shall be made at all hearings conducted under this chapter.

(2) Copies of the proceedings, including any documents referenced in the record, shall be available at the expense of the party requesting the transcription or documents.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

Ind 89.14 Decision and order. (1) **DECISION.** The hearing examiner shall prepare a formal written decision, based on the evidence presented and the testimony taken, as to whether unlawful discrimination has in fact occurred. The decision shall include findings of fact and conclusions of law, and an order and may include an opinion. The findings of fact, conclusions of law, the order and the opinion, if there is one, shall all be combined into one document with as little repetition of the same mate-

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rial as possible. This document shall be served upon each party. The decision of the hearing examiner is the final order of the department.

(2) **DEPARTMENT FINDINGS AND ORDER.** If the hearing examiner finds that the respondent has not engaged in unlawful discrimination as alleged in the complaint, the hearing examiner shall serve a certified copy of the decision on the parties together with an order dismissing the complaint. If the hearing examiner finds that the respondent has engaged in discrimination in violation of the act, the hearing examiner shall order such action by the respondent as will effectuate the purposes of the act, and shall serve a certified copy of the decision on the parties to the hearing along with an order requiring the respondent to comply with the decision. Penalties may be ordered as provided in s. 101.22 (6), Stats.

(3) **DOCUMENT CERTIFICATION.** The department or its duly authorized agent is authorized and empowered to certify all original documents or records in its possession.

(4) **SERVICE OF DECISION.** A certified copy of every decision issued by the department shall be served by certified mail, return receipt requested, to the last known address of each party to the proceedings and to the attorney of record.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

Ind 89.15 Review by labor and industry review commission. Either party may file within the division a petition for review of the decision by the labor and industry review commission as provided in s. 101.22 (4p), Stats. The petition for review shall be received by an employe of the division during regular office hours at the Milwaukee or Madison office of the division within the time period specified in s. 101.22 (4p) (b). "Received" means physical receipt by an employe of the equal rights division in Madison or Milwaukee. The petition for review shall be in writing and shall specify the grounds and particular findings and conclusions of law which are claimed to be in error.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.