WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

FILED
1992 MAY 29 P 3:46
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: West Virginia Human Rights Commission TITLE NUMBER: 77

RULE TYPE: Procedural ; CITE AUTHORITY W. Va. Code §§ 5-11-8(h), 5-11A-1 et seq., 5-11A-13, 29A-3-15(g)

AMENDMENT TO AN EXISTING RULE: YES___ NO x

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 77-8-1

TITLE OF RULE BEING PROPOSED: Rules for the Processing of Complaints and Administrative Proceedings Under the West Virginia Fair Housing Act

DATE OF PUBLIC HEARING: June 30, 1992 TIME: 10:30 a.m.

LOCATION OF PUBLIC HEARING: West Virginia Human Rights Commission
1321 Plaza East, Room 104/106
Charleston, WV 25301-1400

COMMENTS LIMITED TO: ORAL___, WRITTEN___, BOTH x

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: West Virginia Human Rights Commission
1321 Plaza East, Room 104/106
Charleston, WV 25301

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

QUEWANNCOLL C. STEPHENS
EXECUTIVE DIRECTOR

7.30

STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

WV HUMAN RIGHTS COMMISSION
1321 Plaza East
Room 104/106
Charleston, WV 25301-1400

GASTON CAPERTON
GOVERNOR

TELEPHONE (304) 348-2616
FAX (304) 348-2248

Quewanncoii C. Stephens
Executive Director

29 May 1992

Dr. Donald Weston, Secretary
West Virginia Department of
Health and Human Resources
Building 3, State Capitol
Charleston, West Virginia 25305

Re: West Virginia Fair Housing Act
and Implementing Regulations
Rules for the Processing of Complaints
and Administrative Proceedings Under
the West Virginia Fair Housing Act
Title 77, Series 8

Dear Dr. Weston:

In accordance with your telephone conversation yesterday with Norman Lindell of this office, I am writing to confirm that you have approved the West Virginia Human Rights Commission's request to file the above-numbered proposed procedural rules with the Secretary of State.

I would appreciate your endorsing this letter below to verify your approval. Thank you for your assistance in this matter.

Sincerely,

QUEWANNCOII C. STEPHENS
EXECUTIVE DIRECTOR

QCS/jm

DR. DONALD WESTON, Secretary
West Virginia Department of Health
and Human Resources

5-29-92
Date

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules for the Processing of Complaints and Administrative Proceedings Under the West Virginia Fair Housing Act

Type of Rule: _____ Legislative _____ Interpretive X Procedural

Agency: West Virginia Human Rights Commission Address: 1321 Plaza East, Room 104/106, Charleston, WV 25301

1. Effect of Proposed Rule:	ANNUAL Increase	ANNUAL Decrease	FISCAL YEAR Current	FISCAL YEAR Next	FISCAL YEAR Thereafter
Estimated Total Cost	$ 0	$ 0	$ 0	$ 0	$ 0
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

Inasmuch as the duties of the West Virginia Human Rights Commission under these rules are substantially the same as its duties under the previously enacted housing provisions of the West Virginia Human Rights Act, these rules will have no negative fiscal impact on the West Virginia Human Rights Commission. However, inasmuch as these rules will permit the West Virginia Human Rights Commission to maintain its "substantially equivalent agency" status, they will permit the West Virginia Human Rights Commission to continue to receive approximately $10,000 in revenue pursuant to a contract with the Federal Department of Housing and Urban Development.

3. Objectives of these rules:

To establish and clearly set forth the procedures for the processing and adjudication by the West Virginia Human Rights Commission of housing discrimination complaints pursuant to the West Virginia Fair Housing Act.

4. **Explanation of Overall Economic Impact of Proposed Rule.**

A. Economic Impact on State Government.

Inasmuch as these rules will permit the West Virginia Human Rights Commission to maintain its "substantially equivalent agency" status, they will permit the West Virginia Human Rights Commission to continue to receive approximately $10,000 in revenue pursuant to a contract with the federal Department of Housing and Urban Development.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

By helping to further eliminate discrimination in housing, the rules may have a favorable economic impact on protected classes of citizens. While the requirements placed upon sellers, landlords and real estate agents are not substantially different from those previously in effect under the West Virginia Human Rights Act, there are more costly penalties under these rules which may have some increased impact upon persons who engage in unlawful discriminatory housing practices.

C. Economic Impact on Citizens/Public at Large.

None

Date: May 29 1992

Signature of Agency Head or Authorized Representative

QUEWANNCOII C. STEPHENS
EXECUTIVE DIRECTOR

WEST VIRGINIA HUMAN RIGHTS COMMISSION
TITLE 77, SERIES 8
RULES FOR THE PROCESSING OF COMPLAINTS AND ADMINISTRATIVE PROCEEDINGS UNDER THE WEST VIRGINIA FAIR HOUSING ACT

SUMMARY OF PROPOSAL

The attached proposed procedural rules establish the procedures for the processing and adjudication by the West Virginia Human Rights Commission of housing discrimination complaints, pursuant to the West Virginia Fair Housing Act (W. Va. Code §§ 5-11A-1 et seq.). These rules are required by W. Va. Code § 5-11A-13.

TITLE 77
PROCEDURAL RULES
WEST VIRGINIA HUMAN RIGHTS COMMISSION

SERIES 8
RULES FOR THE PROCESSING OF COMPLAINTS
AND FOR ADMINISTRATIVE PROCEEDINGS
UNDER THE WEST VIRGINIA FAIR HOUSING ACT

§ 77-8-1. General

1.1. Scope -- These regulations contain the procedures established by the West Virginia Human Rights Commission, pursuant to W. Va. Code § 5-11A-11, for investigation and conciliation of complaints alleging discriminatory housing practices because of race, color, religion, sex or national origin, handicap or familial status; and for administrative proceedings before an administrative law judge adjudicating charges issued under W. Va. Code § 5-11A-11.

1.2. Authority -- These regulations are issued under authority of W. Va. Code §§ 5-11-8(h), 5-11A-8, 5-11A-9, 5-11A-13, 5-11A-20, and § 29A-3-1 et seq.

1.3. Filing date -- These regulations are promulgated on the _____ day of _____, 1992, and filed on the _____ day of _____, 1992, in the Office of the Secretary of State.

1.4. Effective date -- These regulations become effective on the _____ day of _____, 1992.

1.5. 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 West Virginia Human Rights Commission.

1.6. Fair and expeditious proceedings -- Hearings under these rules shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and complete record. In processing complaints and conducting hearings, the commission will reasonably accommodate persons with disabilities.

1.7. Deviation from regulations -- In special cases, where good cause appears and not contrary to statute, the commission or its hearing examiner may permit deviation from these regulations insofar as it may find compliance therewith to be impractical or unnecessary.

1.8. Practice where regulations do not govern -- In situations where these regulations do not apply, the commission

or its hearing examiner shall exercise discretion in accordance with traditional notions of fairness and justice.

1.9. Severability -- If any of these regulations are held invalid, it shall not be construed to invalidate any of the other provisions of these regulations not otherwise affected.

1.10. Availability of regulations -- The regulations of the commission shall be on file in the office of the Secretary of State.

1.11. Additional copies -- Additional copies of the regulations of commission shall be available to the general public at the offices of the Secretary of State.

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 the executive director, hearing examiner, or other employees or agents of the commission.

1.13. Effect of amendments to the Act -- In the event that the Human Rights Act, West Virginia Code, Chapter 5, Article 11, is amended by the Legislature, these rules and regulations will automatically be amended to conform to such amendments.

§ 77-8-2. Definitions; Time Computations; Service and Filing

2.1. Definitions

As used in this part:

2.1.1. Aggrieved person includes any person who:

2.1.1.a. Claims to have been injured by a discriminatory housing practice; or

2.1.1.b. Believes that such person will be injured by a discriminatory housing practice that is about to occur.

2.1.2. Attorney general means the deputy attorney for the civil rights division or his or her designate.

2.1.3. Charge means the statement of facts issued under § 6.2. upon which the commission has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

2.1.4. Commission, unless otherwise specified, means the executive director of the West Virginia Human Rights Commission or his or her designate.

2.1.5. Commissioners means the duly appointed members of the West Virginia Human Rights Commission.

2.1.6. Complainant means the person who files a complaint under this part.

2.1.7. Conciliation means the attempted resolution of issues raised by a complaint, or by the investigation of a complaint, through informal negotiations involving the aggrieved person, the respondent, and the commission.

2.1.8. Conciliation agreement means a written agreement setting forth the resolution of the issues in conciliation.

2.1.9. Discriminatory housing practice means an act that is unlawful under the West Virginia Fair Housing Act, W. Va. Code § 5-11A-1 et seq.

2.1.10. Dwelling means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, or any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

2.1.11. Party means a person or agency named or admitted as a party to a proceeding. Party includes an aggrieved person who intervenes under § 8.1.

2.1.12. Person includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies. trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers and fiduciaries.

2.1.13. Personal service means handing a copy of the document to the person to be served or leaving a copy of the document with a person of suitable age and discretion at the place of business, residence or usual place of abode of the person to be served.

2.1.14. Receipt of notice means the day that personal service is completed by handing or delivering a copy of the document to an appropriate person or the date that a document is delivered by certified mail.

2.1.15. Respondent means:

2.1.15.a. The person or other entity accused in a complaint of a discriminatory housing practice; and

2.1.15.b. Any other person or entity identified in the course of investigation and notified as required under § 3.9. of these regulations.

2.1.16. To rent includes to lease, to sublease, to let, and otherwise to grant for consideration the right to occupy premises not owned by the occupant.

2.2. Time computations

2.2.1. In general. In computing time under this part, the time period begins the day following the act, event, or default and includes the last day of the period, unless the last day is a Saturday, Sunday, or legal holiday observed by the federal or state government, in which case the time period includes the next business day. When the prescribed time period is seven days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

2.2.2. Modification of time periods. Except for time periods required by statute, the administrative law judge may enlarge or reduce any time period required under this part where necessary to avoid prejudicing the public interest or the rights of the parties.

2.2.3. Entry of orders. In computing any time period involving the date of the issuance of an order or decision by an administrative law judge, the date of issuance is the date the order or decision is served.

2.2.4. Computation of time for delivery by mail

2.2.4.a. Documents are not filed until received by the commission. However, when documents are filed by mail, three days shall be added to the prescribed time period.

2.2.4.b. Service is effected at the time of mailing.

2.2.4.c. When a party has the right or is required to take an action within a prescribed period after the service of a document upon the party, and the document is served by mail, three days shall be added to the prescribed period.

2.3. Service and filing

2.3.1. Generally. Copies of all filed documents shall be served on all parties of record. All filed documents shall clearly designate the docket number, if any, and title of the proceeding. All documents to be filed shall be delivered or

mailed to the West Virginia Human Rights Commission, 1321 Plaza East, Room 104/106, Charleston, West Virginia 25301.

2.3.2. By parties. Parties shall file all documents with the commission, with a copy to all other parties of record. Service of documents upon any party may be made by personal service or by mailing a copy to the last known address. When a party is represented by an attorney, service shall be made upon the attorney. The person serving the document shall certify to the manner and date of service.

2.3.3. By the administrative law judges. Administrative law judges shall serve all notices, orders, decisions and all other documents by mail to the last known address.

§ 77-8-3. Complaints

3.1. Submission of information

3.1.1. The commission will receive information concerning alleged discriminatory housing practices from any person. Where the information constitutes a complaint within the meaning of the West Virginia Fair Housing Act and these rules and is furnished by an aggrieved person, it will be considered to be filed under § 3.6. of these regulations. Where additional information is required for purposes of perfecting a complaint, the commission will advise what additional information is needed and will provide appropriate assistance in the filing of the complaint.

3.2. Who may file complaints.

Any aggrieved person, the commission or the attorney general may file a complaint no later than one year after an alleged discriminatory housing practice has occurred or terminated. The complaint may be filed with the assistance of an authorized representative of an aggrieved person, including any organization acting on behalf of an aggrieved person.

3.3. Persons against whom complaints may be filed

3.3.1. A complaint may be filed against any person alleged to be engaged, to have engaged, or to be about to engaged in a discriminatory housing practice.

3.3.2. A complaint may also be filed against any person who directs or controls, or has the right to direct or control, the conduct of another person with respect to any aspect of the sale, rental, advertising or financing of dwellings or the provision of brokerage services relating to the sale or rental of dwellings if that other person acting within the scope of his or

her authority as employee or agent of the directing or controlling person, is engaged, has engaged, or is about to engage, in a discriminatory housing practice.

3.4. Where to file complaints

3.4.1. Aggrieved persons may file complaints in person with, or by mail to the West Virginia Human Rights Commission, 1321 Plaza East, Room 104/106, Charleston, West Virginia 25301.

3.4.2. Aggrieved persons may provide information to be contained in a complaint by telephone to the commission. The commission will reduce information provided by telephone to writing on the prescribed complaint form and send the form to the aggrieved person to be signed and affirmed as provided in § 3.5.1. of these regulations.

3.5. Form and content of complaint

3.5.1. Each complaint must be in writing and must be signed and affirmed by the aggrieved person filing the complaint or, if the complaint is filed by the commission or the attorney general, by an authorized agent thereof. The signature and affirmation may be made at any time during the investigation. The affirmation shall state: "Having been duly sworn, I depose and say that I have read the foregoing complaint and know the contents thereof, and that it is true and correct; except as to the matters therein stated upon information and belief, which matters I believe to be true."

3.5.2. Complaint forms will be available in the office of the West Virginia Human Rights Commission. Notwithstanding any requirement for use of a prescribed form, the commission will accept any written statement which substantially sets forth the allegations of a discriminatory housing practice under the West Virginia Fair Housing Act as a Fair Housing Act complaint. Personnel in the commission offices will provide appropriate assistance in filling out forms and in filing a complaint.

3.5.3. Each complaint must contain substantially the following information:

3.5.3.a. The name and address of the aggrieved person.

3.5.3.b. The name and address of the respondent.

3.5.3.c. A description and the address of the dwelling which is involved, if appropriate.

3.5.3.d. A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice.

3.6. Date of filing of complaint

3.6.1. Except as provided in paragraph (b) of this section, a complaint is filed when it is received by the commission in a form that reasonably meets the standards of § 3.5.

3.6.2. The commission may determine that a complaint is filed for the purposes of the one-year period for the filing of complaints, upon the submission of written information (including information provided by telephone and reduced to writing by an employee of the commission) identifying the parties and describing generally the alleged discriminatory housing practice.

3.6.3. Where a complaint alleges a discriminatory housing practice that is continuing, as manifested in a number of incidents of such conduct, the complaint will be timely if filed within one year of the last alleged occurrence of that practice.

3.7. Amendment of complaint

Complaints may be reasonably and fairly amended at any time. Such amendments may include, but are not limited to, amendments to cure technical defects or omissions, including failure to sign or affirm a complaint, to clarify or amplify the allegations in a complaint, or to join additional or substitute respondents. Except for the purposes of notifying respondents under § 3.9. of these regulations, amended complaints will be considered as having been made as of the original filing date.

3.8. Service of notice on aggrieved person

Upon the filing of a complaint, the commission will notify, by certified mail or personal service, each aggrieved person on whose behalf the complaint was filed. The notice will:

3.8.1. Acknowledge the filing of the complaint and state the date that the complaint was accepted for filing.

3.8.2. Include a copy of the complaint.

3.8.3. Advise the aggrieved person of the time limits applicable to complaint processing and of the procedural rights and obligations of the aggrieved person under these regulations.

3.8.4. Advise the aggrieved person of his or her right to commence a civil action under W. Va. Code § 5-11A-14 in an appropriate county circuit court not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this two-year period excludes any time during which a proceeding is pending under these regulations with respect to a complaint or charge based on the alleged discriminatory housing practice.

3.8.5. Advise the aggrieved person that in the event he or she files a civil action under W. Va. Code § 5-11A-14, he or she has a duty to notify the commission of such action in writing.

3.8.6. Advise the aggrieved person that retaliation against any person because he or she made a complaint or testified, assisted, or participated in an investigation or conciliation under these regulations, is a discriminatory housing practice that is prohibited under W. Va. Code § 5-11A-7.

3.9. Notification of respondent; joinder of additional or substitute respondents

3.9.1. Within ten days of the filing of a complaint under § 3.6. of these regulations or the filing of an amended complaint under § 3.7. of these regulations, the commission will serve a notice on each respondent by certified mail or by personal service. A person who is not named as a respondent in a complaint, but who is identified in the course of the investigation as a person who is alleged to be engaged, to have engaged, or to be about to engage in the discriminatory housing practice upon which the complaint is based may be joined as an additional or substitute respondent by service of a notice on the person under this section within ten days of the identification.

3.9.2. The notice will identify the alleged discriminatory housing practice upon which the complaint is based, and include a copy of the complaint.

3.9.3. The notice will state the date that the complaint was accepted for filing.

3.9.4. The notice will advise the respondent of the time limits applicable to complaint processing under this part and of the procedural rights and obligations of the respondent under these regulations, including the opportunity to submit an answer to the complaint within ten (10) days of the receipt of the notice.

3.9.5. The notice will advise the respondent of the aggrieved person's right to commence a civil action under W. Va. Code § 5-11A-14 in an appropriate county circuit court, not later

than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this two-year period excludes any time during which a proceeding is pending under these regulations with respect to a complaint or charge based on the alleged discriminatory housing practice.

3.9.6. If the person is not named in the complaint, but is being joined as an additional or substitute respondent, the notice will explain the basis for the commission's belief that the joined person is properly joined as a respondent.

3.9.7. The notice will advise the respondent that retaliation against any person because he or she made a complaint or testified, assisted or participated in an investigation or conciliation under this part or an administrative proceeding under these regulations is a discriminatory housing practice that is prohibited under W. Va. Code § 5-11A-7.

3.10. Answer to complaint

3.10.1. The respondent may file an answer not later than ten days after receipt of the notice described in § 3.9. of these regulations. The respondent may assert any defense that might be available to a defendant in a court of law. The answer must be signed and affirmed by the respondent. The affirmation must state: "I declare under penalty of perjury that the foregoing is true and correct."

3.10.2. An answer may be reasonably and fairly amended at any time during the investigation with the consent of the commission.

§ 77-8-4. Investigation Procedures

4.1. Investigations

4.1.1. Upon the filing of a complaint under § 3.6. of these regulations, the commission will initiate an investigation. The purpose of an investigation are:

4.1.1.a. To obtain information concerning the events or transactions that relate to the alleged discriminatory housing practice identified in the complaint.

4.4.1.b. To document policies or practices of the respondent involved in the alleged discriminatory housing practice raised in the complaint.

4.4.1.c. To develop factual data necessary for the commission to make a determination under § 6.1. whether reasonable cause exists to believe that a discriminatory housing

practice has occurred or is about to occur, and to take other actions provided under this part.

4.1.2. The commission may initiate an investigation of housing practices to determine whether a complaint should be filed under § 3 of these regulations. Such investigations will be conducted in accordance with the procedures described herein.

4.2. Systemic processing

Where the commission determines that the alleged discriminatory practices contained in a complaint are pervasive or institutional in nature, or that the processing of the complaint will involve complex issues, novel questions of fact or law, or will affect a large number of persons, the commission may identify the complaint for systemic processing. This determination can be based on the face of the complaint or on information gathered in connection with an investigation. Systemic investigations may focus not only on documenting facts involved in the alleged discriminatory housing practice that is the subject of the complaint but also on review of other policies and procedures related to matters under investigation, to make sure that they also comply with the nondiscrimination requirements of the West Virginia Fair Housing Act.

4.3. Conduct of investigation

4.3.1. In conducting investigations under this part, the commission will seek the voluntary cooperation of all persons to obtain access to premises, records, documents, individuals, and other possible sources of information; to examine, record, and copy necessary materials; and to take and record testimony or statements of persons reasonably necessary for the furtherance of the investigation.

4.3.2. The commission and the respondent may conduct discovery in aid of the investigation by the same methods and to the same extent that parties may conduct discovery in an administrative proceeding under §§ 10 and 11 of these rules.

4.4. Cooperation of federal, state and local agencies

The commission, in processing West Virginia Fair Housing Act complaints, may seek the cooperation and utilize the services of federal, state or local agencies, including any agency having regulatory or supervisory authority over financial institutions.

4.5. Completion of investigation

4.5.1. The investigation will remain open until the reasonable cause determination is made under § 6.1. of these regulations, or a conciliation agreement is executed and approved

under § 5.2. of these regulations, or the matter is filed and fully adjudicated in a circuit court pursuant to W. Va. Code § 5-11A-14(a)(1)(A).

4.5.2. If during the pendency of the investigation, the complainant initiates a civil action in circuit court pursuant to W. Va. Code § 5-11A-14(a)(1)(A), the complainant shall immediately notify the commission of the filing of such action, and the commission shall suspend the investigation.

4.5.3. Unless it is impracticable to do so, or unless the investigation shall have been suspended pursuant to § 4.5(b), the commission will complete the investigation of the alleged discriminatory housing practice within one hundred (100) days of the filing of the complaint. If the commission is unable to complete the investigation within the 100-day period, the commission will notify the aggrieved person and the respondent, by certified mail or personal service, of the reasons for the delay.

4.6. Final investigative report

4.6.1. At the end of each investigation under this part, the commission will prepare a final investigative report. The investigative report will contain:

4.6.1.a. The names and dates of contacts with witnesses, except that the report will not disclose the names of witnesses that request anonymity. The commission, however, may be required to disclose the names of such witnesses in the course of an administrative hearing under these regulations or a civil action under the West Virginia Fair Housing Act;

4.6.1.b. A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

4.6.2.c. A summary description of other pertinent records;

4.6.2.d. A summary of witness statements; and

4.6.2.e. Answers to interrogatories.

4.6.2. A final investigative report may be amended at any time if additional evidence is discovered.

4.6.3. Notwithstanding the prohibitions and requirements with respect to disclosure of information contained in § 5.6. of these regulations, the commission will make information derived from an investigation, including the final investigative report, available to the aggrieved person and the

respondent. Following the completion of investigation, the commission shall notify the aggrieved person and the respondent that the final investigation report is complete and will be provided upon request.

§ 77-8-5. Conciliation Procedures

5.1. Conciliation

5.1.1. During the period beginning with the filing of the complaint and ending with the filing of a charge or the dismissal of the complaint, the commission will, to the extent feasible, attempt to conciliate the complaint.

5.1.2. In conciliating a complaint, the commission will attempt to achieve a joint resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy any violations of the rights of the aggrieved person, and take such action as will assure the elimination of discriminatory housing practices, or the prevention of their occurrence, in the future.

5.1.3. Generally, officers, employees, and agents of the commission engaged in the investigation of a complaint under this part will not participate or advise in the conciliation of the same complaint or in any factually related complaint. Where the rights of the aggrieved party and the respondent can be protected and the prohibitions with respect to the disclosure of information can be observed, the investigator may suspend fact finding and engage in efforts to resolve the complaint by conciliation.

5.2. Conciliation agreement

5.2.1. The terms of a settlement of a complaint will be reduced to a written conciliation agreement. The conciliation agreement shall seek to protect the interests of the aggrieved person, other persons similarly situated, and the public interest. The types of relief that may be sought for the aggrieved person are described in § 5.3. The provisions that may be sought for the vindication of the public interest are described in § 5.4.

5.2.2. The agreement must be executed by the respondent and the complainant. The agreement is subject to the approval of the commission, who will indicate approval by signing the agreement. The commission will approve an agreement and if the commission is the complainant, will execute the agreement, only if:

5.2.2.a. The complainant and the respondent agree to the relief accorded the aggrieved person;

5.2.2.b. The provisions of the agreement will adequately vindicate the public interest; and

5.2.2.c. If the commission is the complainant, all aggrieved persons named in the complaint are satisfied with the relief provided to protect their interests.

5.2.3. The commission may issue a charge under § 6.2. of these regulations if the aggrieved person and the respondent have executed a conciliation agreement that has not been approved by the commission.

5.3. Relief sought for aggrieved persons

5.3.1. The following types of relief may be sought for aggrieved persons in conciliation:

5.3.1.a. Monetary relief in the form of damages, including damages caused by humiliation or embarrassment, and attorney fees;

5.3.1.b. Other equitable relief including, but not limited to, access to the dwelling at issue, or to a comparable dwelling, the provision of services or facilities in connection with a dwelling, or specific relief; or

5.3.1.c. Injunctive relief appropriate to the elimination of discriminatory housing practices affecting the aggrieved person or other persons.

5.3.2. The conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Arbitration may award appropriate relief as described in paragraph (a) of this section. The aggrieved person and the respondent may, in the conciliation agreement, limit the types of relief that may be awarded under binding arbitration.

5.4. Provisions sought for the public interest

The following are types of provisions may be sought for the vindication of the public interest:

5.4.1. Elimination of discriminatory housing practices.

5.4.2 Prevention of future discriminatory housing practices.

5.4.3. Remedial affirmative activities to overcome discriminatory housing practices

5.4.4. Reporting requirements

5.4.5. Monitoring and enforcement activities

5.5. Termination of conciliation efforts

5.5.1. The commission may terminate its efforts to conciliate the complaint if the respondent fails or refuses to confer with the commission; the aggrieved person or the respondent fail to make a good faith effort to resolve any dispute; or the commission finds, for any reason, that voluntary agreement is not likely to result.

5.5.2. Where the aggrieved person has commenced a civil action under a state or federal law seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced, the commission will terminate conciliation unless the court specifically requests assistance from the commission.

5.6. Prohibitions and requirements with respect to disclosure of information obtained during conciliation

5.6.1. Except as provided in paragraph (b) of this section and § 4.6., nothing that is said or done in the course of conciliation under this part may be made public or used as evidence in a subsequent administrative hearing under these regulations or in civil actions under the West Virginia Fair Housing Act, without the written consent of the persons concerned.

5.6.2. Conciliation agreements shall be made public, unless the aggrieved person and respondent request nondisclosure and the commission determines that disclosure is not required to further the purposes of the West Fair Housing Act. Notwithstanding a determination that disclosure of a conciliation agreement is not required, the commission may publish tabulated descriptions of the results of all conciliation efforts.

5.7. Review of compliance with conciliation agreements

The commission may, from time to time, review compliance with the terms of any conciliation agreement. Whenever the commission has reasonable cause to believe that a respondent has breached a conciliation agreement, the commission shall refer the matter to the attorney general with a recommendation for the filing of a civil action under the West Virginia Fair Housing Act, W. Va. Code § 5-11A-15(a)(2), for the enforcement of the terms of the conciliation agreement.

§ 77-8-6. Issuance of Charge

6.1. Reasonable cause of determination

6.1.1. If a conciliation agreement under § 5.2. of these regulations has not been executed by the complainant and the respondent, and approved by the commission, the commission, within the time limits set forth in paragraph (c) of this section, shall determine whether, based on the totality of the factual circumstances known at the time of the decision, reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The reasonable cause determination will be based on the facts concerning the alleged discriminatory housing practice, provided by complainant and respondent and otherwise disclosed during the investigation. In making the reasonable cause determination, the commission shall consider whether the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action in court.

6.1.1.a. In all cases not involving the legality of local zoning or land use laws or ordinances:

6.1.1.a.1. If the commission determines that reasonable cause exists, the commission will immediately issue a charge under § 6.2. on behalf of the aggrieved person, and shall notify the aggrieved person and the respondent of this determination by certified mail or personal service.

6.1.1.a.2. If the commission makes an initial determination that no reasonable cause exists, the commission shall issue a short and plain written statement of the facts upon which the commission has based its determination; and shall notify the aggrieved person and the respondent of the determination, and of the reconsideration procedures provided by § 77-8-6.4., which notice shall be by certified mail or personal service.

6.1.1.a.3. If a request for reconsideration is not filed within ten (10) days of notice to an aggrieved part of the commission's initial determination of no reasonable cause, or upon reconsideration pursuant to § 6.4. the executive director determines that there is no reasonable cause, the commission shall make a final determination that no probable cause exists, and the commission shall: issue a short and plain written statement of the facts upon which the commission has based the no reasonable cause determination; dismiss the complaint; notify the aggrieved person and the respondent of the dismissal (including the written statement or facts) by certified mail or personal service; and make public disclosure of the dismissal.

6.1.2. If the commission determines that the matter involves the legality of local zoning or land use laws or ordinances, the commission, in lieu of making a determination regarding reasonable cause, shall refer the investigative materials to the attorney general for appropriate action under the West Virginia Fair Housing Act, W. Va. Code § 5-11A-15, and shall notify the aggrieved person and the respondent of this action by certified mail or personal service.

6.1.3. The commission may not issue a charge under paragraph (a) of this section regarding an alleged discriminatory housing practice, if an aggrieved person has commenced a civil action under a state or federal law seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced. If a charge may not be issued because of the commencement of such a trial, the commission will so notify the aggrieved person and the respondent by certified mail or personal service.

6.1.4. The commission shall make a reasonable cause determination within one hundred (100) days after filing of the complaint, unless it is impracticable to do so.

6.1.5. If the commission is unable to make the determination within the one hundred (100) day period specified in paragraph (c)(1) of this section, the commission will notify the aggrieved person and the respondent, by certified mail or personal service, of the reasons for the delay.

6.2. Issuance of charge

6.2.1. A charge:

6.2.1.a. Shall consist of a short and plain written statement of the facts upon which the commission has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;

6.2.1.b. Shall be based on the final investigative report; and

6.2.1.c. Need not be limited to facts or grounds that are alleged in the complaint.

6.2.2. Within three (3) business days after the issuance of the charge, the commission shall assign the case to an administrative law judge for hearing pursuant to these regulations, and shall serve the charge and notifications in accordance with § 2.3. of these rules, and shall notify the attorney general of the filing of the charge.

6.3. Election of civil action or provision of administrative proceeding

6.3.1. If a charge is issued under § 6.2., a complainant (including the attorney general or the commission), a respondent, or an aggrieved person on whose behalf the complaint is filed may elect, in lieu of an administrative proceeding under these regulations, to have the claims asserted in the charge decided in a civil action under the West Virginia Fair Housing Act, W. Va. Code § 5-11A-13(o).

6.3.2. The election must be made not later than twenty (20) days after the receipt of service of the charge. The notice of the election must be filed with the commission and served on the attorney general, the respondent, and the aggrieved person on whose behalf the complaint was filed. The notification will be filed and served in accordance with § 2.3. of these regulations.

6.3.3. If an election is not made under this section, the commission will maintain an administrative proceeding based on the charge in accordance with the procedures set forth herein.

6.3.4. If an election is made under this section, the commission shall immediately notify and authorize the attorney general to commence and maintain a civil action seeking relief under the West Virginia Fair Housing Act, W. Va. Code § 5-11A-13(o), on behalf of the aggrieved person in the appropriate circuit court. Such notification and authorization shall include transmission of the file in the case, including a copy of the final investigative report and the charge, to the attorney general.

6.4. Reconsideration of administrative dismissal

The following procedures shall apply whenever there is an initial determination of no reasonable cause, or when a complaint is otherwise dismissed, except when a complaint is dismissed by an administrative law judge or pursuant to a settlement reached by the parties or pursuant to a conciliation agreement between the commission and the respondent, in which cases these procedures do not apply:

6.4.1. An aggrieved person may apply to the commission, through its compliance director or such other person as the executive director may designate, for an administrative reconsideration of the dismissal of her/his complaint. Requests for reconsideration shall be in writing, shall state specifically the grounds relied on, may contain new evidence not previously considered by the commission and shall be filed at the commission

office within ten (10) days from the date of the aggrieved person's receipt of such copy.

6.4.2. The commission shall forward a copy of the request for administrative reconsideration of a dismissal and any material in support thereof to the respondent, who may respond thereto within ten (10) days of receipt of such copy.

6.4.3. Within twenty (20) days after receipt by the commission of the request for reconsideration, the matter will be referred to the commission's attorney, or such other person as the executive director may designate, who will consider any new evidence and secure new information as may be necessary and appropriate. The reconsideration shall be scheduled to be heard by the attorney or other designated person within forty (40) days after such referral.

6.4.4. The aggrieved person and respondent shall be given at least ten (10) days' written notice of the time and place of the reconsideration. The notice shall be given by personal delivery or by certified mail, return receipt requested, and shall advise the aggrieved person that she/he must be present at the reconsideration and may be accompanied by counsel.

6.4.5. If after having received proper notice, the aggrieved person does not appear at the reconsideration, the aggrieved person shall be deemed to have waived all rights to reconsideration unless it is shown to the satisfaction of the executive director or the chairperson that the failure to appear was due to circumstances beyond the aggrieved person's control.

6.4.6. The commission's attorney or other designated person shall preside at the reconsideration and shall be provided with all information in the commission file pertaining to the complaint under reconsideration. The presiding person, after considering the evidence, shall file a report and recommendation with the executive director which shall recommend that the dismissal of the complaint be upheld, reversed, or modified or that the complaint be remanded for further investigation. The report shall be filed with the executive director within fifteen (15) days after the reconsideration.

6.4.7. If upon consideration of the report the executive director determines that further investigation is warranted, further investigation shall be conducted.

6.4.8. The executive director shall make a final determination as to whether there is reasonable cause.

6.5. Prompt judicial action

6.5.1. If at any time following the filing of a complaint, the commission concludes that prompt judicial action is necessary to carry out the purposes of these regulations, the commission may authorize the attorney general to commence a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint. The commencement of a civil action by the attorney general under this section will not affect the initiation or continuation of proceedings under this part or administrative proceedings under these regulations.

6.5.2. If the commission has reason to believe that a basis exists for the commencement of proceedings against the respondent under W. Va. Code § 5-11A-15, or proceedings by any governmental licensing or supervisory authorities, the commission shall transmit the information upon which that belief is based to the attorney general and to other appropriate authorities.

§ 77-8-7 Administrative Law Judge

7.1. Designation

Proceedings under this part shall be presided over by an administrative law judge who shall be appointed by the executive director of the West Virginia Human Rights Commission. An administrative law judge under these regulations may be the same person designated to serve as a Human Rights Commission hearing examiner under the West Virginia Human Rights Act and its implementing regulations.

7.2. Authority

The administrative law judge shall have all powers necessary to conduct fair and impartial hearings including, but not limited to, the power:

7.2.1. To conduct hearings in accordance with these rules.

7.2.2. To administer oaths and affirmations and examine witnesses.

7.2.3. To issue subpoenas.

7.2.4. To rule on offers of proof and receive evidence.

7.2.5. To take depositions or have depositions taken when the ends of justice would be served.

7.2.6. To regulate the course of the hearing and the conduct of parties and their counsel.

7.2.7. To hold conferences for the settlement or simplification of the issues by consent of the parties.

7.2.8. To dispose of motions, procedural requests, and similar, matters.

7.2.9. To make decisions as provided herein.

7.20.10. To exercise such powers vested in the commission as are necessary and appropriate for the purpose of the hearing and conduct of the proceeding.

7.3. Disqualification

7.3.1. Disqualification

If an administrative law judge finds that there is a basis for his or her disqualification in a proceeding, the administrative law judge shall withdraw from the proceeding. Withdrawal is accomplished by entering a notice in the record and by providing a copy of the notice to the executive director of the commission.

7.3.2. Motion for recusal

If a party believes that the presiding administrative law judge should be disqualified in a proceeding for any reason, the party may file a motion to recuse with the administrative law judge. The motion shall be supported by an affidavit setting forth the alleged grounds for disqualification. The administrative law judge shall rule on the motion. If the administrative law judge denies the motion, the administrative law judge shall incorporate a written statement of the reasons for the denial in the record.

7.3.3. Redesignation of administrative law judge

If an administrative law judge is disqualified, the executive director shall designate another administrative law judge to preside over further proceedings.

§ 77-8-8 Parties

8.1. In general

8.1.1. Parties to the proceeding include:

8.1.1.a The commission. The commission files the charge seeking appropriate relief for an aggrieved party and vindication of the public interest.

8.1.1.b. Respondent. A respondent is a person named in the charge against whom relief is sought.

8.1.1.c. Intervenors. Any aggrieved person may file a request for intervention. Intervention shall be permitted if the request is timely, and:

8.1.1.c.1. The intervenor is the aggrieved person on whose behalf the charge is issued.

8.1.1.c.2. The intervenor is an aggrieved person who claims an interest in the property or transaction that is the subject of the charge and the disposition of the charge may as a practical matter impair or impede the aggrieved person's ability to protect that interest, unless the aggrieved person is adequately represented by the existing parties.

8.1.2. Rights of parties

Each party may appear in person, be represented by counsel, examine or cross-examine witnesses, introduce documentary or other relevant evidence into the record, and request the issuance of subpoenas.

8.1.3. Amicus curiae

Briefs of amicus curiae may be permitted at the discretion of the administrative law judge. Such participants are not parties to the proceeding.

8.2. Representation

8.2.1. Representation of the commission

The commission shall be represented by the attorney general or his/her designee.

8.2.2. Representation of other parties

Other parties may be represented as follows:

8.2.2.a. Individuals may appear on their own behalf.

8.2.2.b. A member of a partnership may represent the partnership.

8.2.2.c. An officer of a corporation, trust or association may represent the corporation, trust or association.

8.2.2.d. An officer or employee of any governmental unit, agency or authority may represent that unit, agency or authority.

8.2.2.e. An attorney authorized to practice law in the State of West Virginia. The attorney's representation that he or she is authorized to practice law in West Virginia courts is sufficient evidence of the attorney's qualifications under this section, unless otherwise ordered by the administrative law judge.

8.2.3. Notice of appearance

Each attorney or other representative of a party shall file a notice of appearance. The notice must indicate the party of whose behalf the appearance is made and the address at which such attorney or representative can be served. Any individual acting in a representative capacity may be required by the administrative law judge to demonstrate authority to act in that capacity.

8.2.4. Withdrawal

An attorney or other representative of a party must file a written notice of intent before withdrawing from participation in the proceeding.

8.3. Standards of conduct

8.3.1. In general

All persons appearing in proceedings under this part shall act with integrity and an ethical manner.

8.3.2. Exclusion

The administrative law judge may exclude parties or their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or violations of the prohibitions against ex parte communications. If an attorney is suspended or barred from participation in a proceeding by an administrative law judge, the administrative law judge shall include in the record the reasons for the action. An attorney that is suspended or barred from participation may appeal to the executive director of the commission. The proceeding will not be delayed or suspended pending disposition on such appeal, except that the administrative law judge shall suspend the proceeding for a reasonable time to enable the party to obtain another attorney.

§ 77-8-9 Pleadings and Motions

9.1. In general

9.1.1. Form

Every pleading, motion, brief or other document shall contain a caption setting forth the title of the proceeding, the docket number, and the designation of the type of document (e.g., charge, answer or motion to dismiss).

9.1.2. Signature

Every pleading, motion, brief or other document filed by a party shall be signed by the party, the party's representative, or the attorney representing the party, and must include the signer's address and telephone number. The signature constitutes a certification that the signer has read the document, that to the best of the signer's knowledge, information and belief there is good ground to support the document, and that it is not interposed for delay.

9.1.3. Timely filing

The administrative law judge may refuse to consider any motion or other pleading that is not filed in a timely fashion and in compliance with this part.

9.2. The charge

9.2.1. Filing and service

Within three days after the issuance of a charge, the commission shall file the charge and serve copies (with the additional information required under paragraph (b) of this section) on the respondent and the aggrieved person on whose behalf the complaint was filed.

9.2.2. Contents

The charge shall consist of a short and plain written statement of the facts upon which the commission has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur. The following notifications shall be served with the charge:

9.2.2.a. The notice shall state that a complainant (including the commission, if the commission filed the complaint), a respondent, or an aggrieved person on whose behalf the complaint was filed may elect to have the claims asserted in the charge decided in a civil action under W. Va. Code § 5-11A-13(o) of the Act in lieu of an administrative

proceeding under these regulations. The notice shall state that the election must be made not later than twenty (20) days after the receipt of the service of the charge. Where the commission is the complainant, the executive director must make the election not later than twenty (20) days after the service of the charge. The notice shall state that the notification of the election must be served on the commission, the respondent, the aggrieved party on whose behalf the complaint was filed and the attorney general.

9.2.2.b. The notice shall state that if no person timely elects under paragraph (b)(1) of this section to have the claims asserted in the charge decided in a civil action under W. Va. Code § 5-11A-13(o) of the Act, an administrative proceeding will be conducted. The notice shall state that if an administrative hearing is conducted:

9.2.2.b.1. The parties will have an opportunity for a hearing.

9.2.2.b.2. The respondent will have an opportunity to file an answer to the charge within thirty (30) days of the date of service of the charge.

9.2.2.b.3. The aggrieved person may participate as a party to the administrative proceeding by filing a timely request for intervention.

9.2.3. The notice shall state that if at any time following the service of the charge on the respondent, the respondent intends to enter into a contract, sale, encumbrance, or lease with any person regarding the property that is the subject of the charge, the respondent must provide a copy of the charge to the person before the respondent and the person enter into the contract, sale, encumbrance or lease.

9.3. Answer to charge

Within the thirty (30) days after the service of the charge, a respondent contesting material facts alleged in a charge or contending that the respondent is entitled to judgement as a matter of law shall file an answer to the charge. An answer shall include:

9.3.1. A statement that the respondent admits, denies, or does not have and is unable to obtain sufficient information to admit or deny, each allegation made in the charge. A statement of lack of information shall have the effect of a denial. Any allegation that is not denied shall be deemed to be admitted.

9.3.2. A statement of each affirmative defense and a statement of facts supporting each affirmative defense.

9.4. Time frame orders

Following the expiration of thirty (30) days after the service of a charge, the administrative law judge shall issue a time frame order, setting forth a schedule for discovery, motions, prehearing memoranda and an evidentiary hearing, which order shall be served upon the parties, the complainant and each aggrieved person.

9.5. Request for intervention

Upon timely application, any aggrieved person may file a request for intervention to participate as a party to the proceeding. Requests for intervention submitted within 30 days after the filing of the charge shall be considered to be timely filed.

9.6. Amendments and supplemental pleadings

9.6.1. Amendments

9.6.1.a. By right. The commission may amend its charge once as a matter of right prior to filing of the answer.

9.6.1.b. By leave. Upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, the administrative law judge may allow amendments to pleadings upon motion of the party.

9.6.1.c. Conformance to the evidence. When issues not raised by the pleadings are reasonably within the scope of the original charge and have been tried by the express or implied consent of the parties, the issues shall be treated in all respects as if they had been raised in the pleadings and amendments may be made as necessary to make the pleading conform to evidence.

9.6.2. Supplemental pleadings

The administrative law judge may, upon reasonable notice, permit supplemental pleadings concerning transactions, occurrences or events that have happened or been discovered since the date of the pleadings and which are relevant to any of the issues involved.

9.7. Motions

9.7.1. Any application for an order or other request shall be made by a motion which, unless made during an appearance before the administrative law judge, shall be made in writing.

All parties shall be given a reasonable opportunity to respond to written or oral motions or requests.

9.7.2. Within five days after a written motion is served, any party to the proceeding may file an answer in support of, or in opposition to the motion.

9.7.3. The administrative law judge may order oral argument on any motion.

§ 77-8-10 Discovery

10.1. In general

The following actions govern discovery in aid of administrative proceedings under these regulations. Except for time periods stated in these rules, to the extent that these rules conflict with discovery procedures in the West Virginia Rules of Civil Procedure apply.

10.2. Scope

10.2.1. The parties are encouraged to engage in voluntary discovery procedures. Discovery shall be conducted as expeditiously and inexpensively as possible, consistent with the needs of all parties to obtain relevant evidence. Unless otherwise ordered by the administrative law judge, the parties may obtain discovery regarding any matter, not privileged, which is or may be relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition, and location of documents or persons having knowledge of any discoverable matter. It is not grounds for objection that information sought will not be admissible if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

10.2.2. For the purposes of obtaining discovery from a non-intervening aggrieved person, the term "party" as used in these rules regarding discovery includes the aggrieved person on whose behalf the charge was issued.

10.3. Depositions

Depositions may be taken by agreement of the parties or upon order of the administrative law judge. Depositions may be taken before any person having the power to administer oaths.

10.4. Use of deposition at hearings

10.4.1. In general

At the hearing, any part or all of a deposition, so far as it is admissible under the West Virginia Rules of Evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice of the taking of the deposition, in accordance with the following provisions:

10.4.1.a. Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

10.4.1.b. The deposition of expert witnesses, may be used by any party for any purpose, unless the administrative law judge rules that such use is unfair or a violation of due process.

10.4.1.c. The deposition of a party or of anyone who at the time of the taking of the deposition was an officer, director, or duly authorized agent of a public or private corporation, partnership, or association that is a party, may be used by any other party for any purpose.

10.4.1.d. The deposition of a witness, whether or not a party, may be used by any party for any purpose if the administrative law judge finds:

10.4.1.d.1. That the witness is dead;

10.4.1.d.2. That the witness is outside of the state or more than one hundred (100) miles from the place of hearing, unless it appears that the absence of the witness was procured by the party offering the deposition;

10.4.1.d.3. That the witness is unable to attend to testify because of age, sickness, infirmity, or imprisonment:

10.4.1.d.4. That the party offering the deposition has been unable to procure the attendance of the witness by subpoena: or

10.4.1.d.5. Whenever exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

10.4.2. If a part of a deposition is offered in evidence by a party, any other party may require the party to introduce all of the deposition that is relevant to the part introduced. Any party may introduce any other part of the deposition.

10.4.3. Substitution of parties does not affect the right to use depositions previously taken. If a proceeding has been dismissed and another proceeding involving the same subject matter is later brought between the same parties or their representatives or successors in interest, all depositions lawfully taken in the former proceeding may be used in the latter proceeding.

10.4.4. Objections to admissibility

Except as provided in this paragraph, objection may be made at the hearing to receiving in evidence any deposition or part of a deposition for any reason that would require the exclusion of the evidence if the witness were present and testifying.

10.4.4.a. Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition unless the basis of the objection is one which might have been obviated or removed if presented at that time.

10.4.4.b. Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed or cured if promptly presented, are waived unless reasonable objection is made at the taking of the deposition.

10.4.4.c. Objections to the form of written interrogatories are waived, unless served in writing upon the party propounding the interrogatories.

10.5. Written interrogatories

10.5.1. Written interrogatories to parties

Any party may serve on any other party written interrogatories to be answered by the party served. If the party served is a public or private corporation, a partnership, an association, or a governmental agency, the interrogatories may be answered by any authorized officer or agent who shall furnish such information as may be available to the party. A party may serve not more than forty (40) written interrogatories on another party without an order of the administrative law judge.

10.5.2. Responses to written interrogatories

Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless the party objects to the interrogatory. If a party objects to an interrogatory, the

response shall state the reasons for the objection in lieu of an answer. The answer and objections shall be signed by the person making them, except that objections may be signed by the counsel for the party. The party upon whom the interrogatories were served shall serve copy of the answers and objections upon all parties within twenty (20) days after service of the interrogatories.

10.6. Production of documents and other evidence

Any party may serve on any other party a request to produce documents or things. Within twenty (20) days of the service of the request, the party upon whom the request is served shall serve a written response on the party submitting the request, which response shall with regard to each request:

10.6.1. Refer to the request and enclose the documents which are responsive to such request.

10.6.2. Make objection to the request and state the reason for the objection.

10.7. Entry upon land for inspection and other purposes; and physical and mental examinations

10.7.1. In general

Any party may serve on any other party a request to:

10.7.1.a. Permit the party making the request, or a person acting on the party's behalf, to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things that are in the possession, custody, or control of the party upon whom the request is served;

10.7.1.b. Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, photographing, testing, or other purposes stated in paragraph (a)(1) of this section; or

10.7.1.c. Submit to a physical or mental examination by a physician.

10.7.2. The request shall:

10.7.2.a. Set forth the items to be inspected by individual item or by category of items;

10.7.2.b. Describe each item or category with reasonable particularity;

10.7.2.c. Specify a reasonable time, place and manner for making the inspection and performing the related acts; and

10.7.2.d. Specify the time, place, manner, conditions, and scope of the physical or mental examination, and the person or persons who will make the examination. A report of the examining physician shall be made in accordance with Rule 35(b) of the West Virginia Rules of Civil Procedure.

10.7.3. Response to request

Within twenty (20) days of the service of the request, the party upon whom the request is served shall serve a written response on the party submitting the request. The response shall state, with regard to each item or category:

10.7.3.1. That inspection and related activities will be permitted as requested; or

10.7.3.2. That objection is made to the request in whole or in part. If an objection is made, the response must state the reasons for the objection.

10.8. Supplementation of responses

10.8.1. In general

A party who responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information acquired after the response was made except:

10.8.1.a. A party is under a duty to timely supplement responses with respect to any question directly addressed to:

10.8.1.a.1. The identity and location of persons having knowledge of discoverable matters; and

10.8.1.a.2. The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the expert witness is expected to testify, and the substance of the testimony.

10.8.1.a.3. A party is under a duty to timely amend a previous response if the party later obtains information upon the basis of which:

10.8.1.a.3.1. The party knows the response was incorrect when made; or

10.8.1.a.3.2. The party knows the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is, in substance, a knowing concealment.

10.8.2. By order or agreement

A duty to supplement responses may be imposed by order of the administrative law judge or by agreement of the parties.

10.9. Protective orders

Upon motion of a party or a person from whom discovery is sought or in accordance with § 10.8.(c), the administrative law judge may make appropriate orders to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense as a result of the requested discovery request. The order may direct that:

10.9.1. The discovery may not be had;

10.9.2. The discovery may be had only on specified terms and conditions, including a designation of time and place for discovery;

10.9.3. The discovery may be had by a method of discovery other than that selected by the party seeking discovery;

10.9.4. Certain irrelevant matters may not be the subject of discovery, or that the scope of discovery be limited to certain matters;

10.9.5. Discovery may be conducted with no one present other than persons designated by the administrative law judge; or

10.9.6. A trade secret or other confidential research, development or commercial information may not be disclosed, or may be disclosed only in a designated way.

10.10. Discovery of commission staff and records

10.10.1. The staff of the commission shall not be examined either by interrogatory or deposition except when leave to undertake such examination is granted by the administrative law judge upon motion alleging that:

10.10.1.a. The staff person has direct personal knowledge of evidence relevant to the proceeding other than evidence gathered as a result of investigation.

10.10.1.b. For other reasons, which shall be set forth with particularity, justice requires that the petition be granted.

10.10.1.c. Discovery has revealed that the staff person will be called as a witness.

10.10.2. Information which is exempt from discovery includes, but is not limited to:

10.10.2.a. Any record, report, memorandum, or communication dealing with the internal practice, policy and procedure of the commission.

10.10.2.b. Any record, report, memorandum, or communication of staff or any staff meeting regarding the institution, progress or result of an investigation of a complaint or regarding matters prepared in anticipation of a hearing.

10.10.2.c. Any record, report, memorandum, or communication regarding any endeavor to eliminate the unlawful discriminatory practice complained of by conference, conciliation or persuasion.

10.10.2.d. The work product of an investigator or other staff member made in the course of an investigation of a complaint or in anticipation of or in preparation for a hearing on the complaint, or any report, record, memorandum, or communication made by staff during the investigation of a complaint or in anticipation of or in preparation for a hearing on the complaint which is otherwise privileged.

10.10.2.e. Any memorandum, statement or mental impression prepared or obtained by the commission's attorney.

10.11. Failure to make or cooperate in discovery

10.11.1. Motion to compel discovery

If a deponent fails to answer a question propounded, or a party upon whom a request is made under §§ 10.3. through 10.5. fails to respond adequately, objects to a request, or fails to permit inspection as requested, the discovering party may move the administrative law judge for an order compelling a response or an inspection in accordance with the request. The motion shall:

10.11.1.a. State the nature of the request;

10.11.1.b. Set forth the response or objection of the party upon whom the request was served;

10.11.1.c. Present arguments supporting the motion; and

10.11.1.d. Attach copies of all relevant discovery requests and responses.

10.11.2. Evasive or incomplete answers

For the purposes of this section, an evasive or incomplete answer or response will be treated as a failure to answer or respond.

10.11.3. Administrative law judge ruling

In ruling on a motion under this section, the administrative law judge may enter an order compelling a response or an inspection in accordance with the request, may issue sanctions under paragraph (d) of this section, or may enter a protective order under § 10.7.

10.11.4 Sanctions

If a party fails to comply with an order (including an order for taking a deposition, the production of evidence within the party's control, a request for admission, or the production of witnesses) the administrative law judge may:

10.11.4.a. Draw an inference in favor of the requesting party with regard to the information sought;

10.11.4.b. Prohibit the party failing to comply with the order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought;

10.11.4.c. Permit the requesting party to introduce secondary evidence concerning the information sought;

10.11.4.d. Strike any appropriate part of the pleadings or other submissions of the party failing to comply with such order; or

10.11.4.e. Take such other action as may be appropriate.

§77-8-11 Subpoenas

11.1. In general

This section governs the issuance of subpoenas in administrative proceedings under these rules. Except for time periods stated in these rules, to the extent that this rule conflicts with procedures for the issuance of subpoenas, the West Virginia Rules of Civil Procedure apply.

11.2. Issuance of subpoena

Upon the written request of a party, the executive director of the commission or the presiding administrative law judge may issue a subpoena requiring:

11.2.1. The attendance of a witness for the purpose of giving testimony at a deposition;

11.2.2. The attendance of a witness for the purpose of giving testimony at a hearing; and

11.2.3. The production of relevant books, papers, documents or tangible things.

11.3. Time of request

Requests for subpoenas in aid of discovery must be submitted in time to permit the conclusion of discovery fifteen (15) days before the date scheduled for the hearing. If a request for subpoenas of a witness for testimony at a hearing is submitted three days or less before the hearing, the subpoena shall be issued at the discretion of the presiding administrative law judge.

11.4. Service

A subpoena may be served by any person who is not a party and is not less than eighteen (18) years of age. Service on a person shall be made by delivering a copy of the subpoena to the person and by tendering witness fees and milage to that person. When the subpoena is issued on behalf of the commission, witness fees and mileage need not be tendered with the subpoena.

11.5. Amount of witness fees and mileage

A witness summoned by a subpoena issued under this section is entitled to the same witness and mileage fees as a witness in proceedings in the circuit courts of this state. Fees payable to a witness summoned by a subpoena shall be paid the party requesting the issuance of the subpoena, unless otherwise ordered by the administrative law judge as a part of the assessment of

the costs. Where the administrative law judge determines that a party is unable to pay the fees, the fees shall be paid by the commission.

11.6. Motion to quash or limit subpoena

Upon a motion by the person served with a subpoena or by a party, made within five (5) days of the service of the subpoena (but in any event not less than the time specified in the subpoena for compliance), the administrative law judge may:

11.6.1. Quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown; or

11.6.2. Condition denial of the motion upon the advancement, by the party on whose behalf the subpoena was issued, of the reasonable cost of producing subpoenaed books, papers or documents. Where the circumstances require, the administrative law judge may act upon such a motion at any time after a copy of the motion has been served upon the party on whose behalf the subpoena was issued.

11.7. Failure to comply with subpoena

If a person fails to comply with a subpoena issued under this section, the party requesting the subpoena may refer the matter to the attorney general for enforcement in appropriate proceedings under W. Va. Code § 5-11A-12.

§ 77-8-12 Prehearing Procedures

12.1. Prehearing memoranda

12.1.1. In general

Before the commencement of the hearing, the administrative law judge may direct parties to file prehearing memoranda.

12.1.2. Contents of prehearing memoranda

The prehearing memoranda must state the name of the party or parties presenting the memorandum, and, unless otherwise directed by the administrative law judge, briefly set forth the following:

12.1.2.a. Issues involved in the proceeding.

12.1.2.b. Facts stipulated by the parties and a statement that the parties have made a good faith effort to stipulate to the greatest extent possible.

12.1.2.c. Facts in dispute.

12.1.2.d. Witnesses (together with a summary of the testimony expected) and exhibits to be presented at the hearing. (Copies of those exhibits not already provided to the other party shall be attached.)

12.1.2.e. A brief statement of applicable law.

12.1.2.f. Conclusions to be drawn.

12.1.2.g. Estimated time required for presentation of the party's case.

12.1.2.h. Such other information as may assist in the disposition of the proceeding.

12.2. Prehearing conference

12.2.1. In general

Before the commencement or during the course of the hearing, the administrative law judge may direct the parties to participate in a conference to expedite the hearing.

12.2.2. Matters considered

At the conference, the following matters may be considered:

12.2.2.a. Simplification and clarification of the issues.

12.2.2.b. Necessary amendments to the pleadings.

12.2.2.c. Stipulations of fact and of the authenticity, accuracy, and admissibility of documents.

12.2.2.d. Limitations on the number of witnesses.

12.2.2.e. Negotiation, compromise, or settlement of issues.

12.2.2.f. The exchange of proposed exhibits.

12.2.2.g. Matters of which official notice will be requested.

12.2.2.h. A schedule for the completion of actions discussed at the conference.

12.2.2.i. Such other information as may assist in the disposition of the proceeding.

12.2.3. Conduct of conference

The conference may be conducted by telephone, correspondence or personal attendance. Conferences, however, shall generally be conducted by a conference call, unless the administrative law judge determines that this method is impracticable. The administrative law judge shall give reasonable notice of the time, place and manner of the conference.

12.2.4. Record of conference

Unless otherwise directed by the administrative law judge, the conference will not be stenographically recorded. The administrative law judge will reduce the actions taken at the conference to a written order or, if the conference takes place less than seven days before the beginning of the hearing, may make a statement on the record summarizing the actions taken at the conference.

12.3. Mediation

The administrative law judge, upon the motion of a party or upon his or her own motion, may request the appointment of a mediator to attempt mediation of the charge. The mediator shall convene and preside over conferences and settlement negotiations between the parties and assess the practicalities of a potential settlement. The conduct of mediation or settlement negotiations shall not unduly delay the commencement of the hearing.

§ 77-8-13 Hearing Procedures

13.1. Date and place of hearing

13.1.1. Date

The hearing shall commence not later than one hundred twenty (120) days following the issuance of the charge unless it is impracticable to do so. If the hearing cannot be commenced within this time period, the administrative law judge shall notify in writing all parties, the aggrieved persons on whose behalf the charge was filed, and the attorney general of the reasons for the delay.

13.1.2. Place

The hearing will be conducted at a place in the vicinity in which the discriminatory housing practice is alleged to have occurred or to be about to occur, unless otherwise agreed by the parties, the aggrieved person and the administrative law judge.

13.1.3. Notification of time and place for hearing

The time frame order issued by the administrative law judge shall specify the time, date and place for the hearing. The administrative law judge may change the time, date or place of the hearing, or may temporarily adjourn or continue a hearing for good cause shown. If such a change is made or the hearing is temporarily adjourned, the administrative law judge shall give the parties at least five (5) days' notice of the revised time, date and place for the hearing, unless otherwise agreed by the parties.

13.2. Conduct of hearing

The hearing shall be conducted in accordance with the Administrative Procedure Act, W. Va. Code § 29A-1-1.

13.3. Waiver of right to appear

If all parties waive their right to appear before the administrative law judge or to present evidence and arguments, it is not necessary for the administrative law judge to conduct an oral hearing. Such waivers shall be made in writing and filed with the administrative law judge. Where waivers are submitted by all parties, the administrative law judge shall make a record of the relevant written evidence submitted by the parties and pleadings submitted by the parties with respect to the issues in the proceeding. These documents shall constitute the evidence in the proceeding and the decision shall be based upon this evidence. Such hearings shall be deemed to commence on the first day that written evidence may be submitted for the record.

13.4. Evidence

The West Virginia Rules of Evidence apply to the presentation of evidence in hearings under this part.

13.5. In camera and protective orders

The administrative law judge may limit discovery or the introduction of evidence, or may issue such protective or other orders necessary to protect privileged communications. If the administration law judge determines that information in documents containing privileged matters should be made available to a party, the administrative law judge may order the preparation of a summary or extract of the nonprivileged matter contained in the original.

13.6. Exhibits

13.6.1. Identification

All exhibits offered into evidence shall be numbered sequentially and marked with a designation identifying the party offering the exhibit.

13.6.2. Exchange of exhibits

One copy of each exhibit offered into evidence must be furnished to each of the parties and to the administrative law judge. If the administrative law judge does not fix a time for the exchange of exhibits, the parties shall exchange copies of exhibits at the earliest practicable time before the commencement of the hearing. Exhibits submitted as rebuttal evidence are not required to be exchanged before the commencement of the hearing if the submission of such evidence could not reasonably be anticipated at that time.

13.7. Authenticity

The authenticity of all documents furnished to the parties as required under § 13.6. and submitted as proposed exhibits in advance of the hearing shall be admitted unless a party files a written objection to the exhibit before the commencement of the hearing. Upon a clear showing of good cause for failure to file such a written objection, the administrative law judge may permit the party to challenge the authenticity.

13.8. Stipulations

The parties may stipulate to any pertinent facts by oral agreement at the hearing or by written agreement at any time. Stipulations may be submitted into evidence at any time before the end of the hearing. When received into evidence, the stipulation is binding on the parties.

13.9. Record of hearing

13.9.1. Hearing record

All oral hearings shall be recorded and transcribed by a reporter designated by, and under the supervision of, the administrative law judge. The original transcript shall be a part of the record and shall constitute the sole official transcript. All exhibits introduced as evidence shall be marked for identification and incorporated as a part of the record. Transcripts may be obtained by the parties and by the public from the official reporter at rates not to exceed the applicable rates fixed by the contract with the reporter.

13.9.2. Corrections

Corrections to the official transcript will be permitted upon motion of a party. Motions for correction must be submitted within five days of the receipt of the transcript. Corrections of the official transcript will be permitted only where errors of substance are involved and upon the approval of the administrative law judge.

13.10. Arguments, post-hearing memoranda, and proposed findings of fact and conclusions of law

13.10.1. Arguments

Following the submission of evidence at an oral hearing, the administrative law judge may hear oral arguments at the hearing. The administrative law judge may limit the time permitted for such arguments to avoid unreasonable delay.

13.10.2. Submission of post-hearing memoranda and proposed findings of fact and conclusions of law

The administrative law judge may permit the submission of written memoranda and proposed findings of fact and conclusions of law following the adjournment of the oral hearing. Written post-hearing submissions shall be simultaneously filed by all parties and shall be due not later than thirty (30) days following the adjournment of the oral hearing.

13.11. End of hearing

13.11.1. Oral hearings

Where there is an oral hearing, the hearing ends on the day of the adjournment of the oral hearing or, where written briefs are permitted, on the date that the written briefs are due.

13.11.2. Hearing on written record

Where the parties have waived an oral hearing, the hearing ends on the date set by the administrative law judge as the final date for the receipt of submissions by the parties.

13.12. Receipt of evidence following hearing

Following the end of the hearing, no additional evidence may be accepted into the record, except with the permission of the administrative law judge. The administrative law judge may receive additional evidence upon a determination that new and material evidence was not readily available before the end of the hearing, the evidence has been timely submitted, and its acceptance will not unduly prejudice the rights of the parties.

However. The administrative law judge shall include in the record any motions for attorney's fees (including supporting documentation), and any approved corrections to the transcripts.

§ 77-8-14 Dismissals and Decisions

14.1. Dismissal

14.1.1. Election of judicial determination

If the complainant, the respondent, or the aggrieved person on whose behalf a complaint was filed makes a timely election to have the claims asserted in the charge decided in a civil action under W. Va. Code § 5-11A-13(o), the administrative law judge shall dismiss the administrative proceeding.

14.1.2. Effect of a civil action on administrative proceeding

An administrative law judge may not continue an administrative proceeding under this part regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved person under state or federal law seeking relief with respect to that discriminatory housing practice. If such a trial is commenced, the administrative law judge shall dismiss the administrative proceeding. The commencement and maintenance of a civil action for appropriate temporary or preliminary relief under W. Va. Code § 5-11A-13(j), or proceedings for such relief under W. Va. Code § 5-11A-14 does not affect administrative proceedings under these regulations.

14.2. Initial decision of administrative law judge

14.2.1. In general

Within the time period set forth in paragraph (d) of this section, the administrative law judge shall issue an initial decision including findings of fact and conclusions of law upon each material issue of fact or law presented on the record. The initial decision of the administrative law judge shall be based on the record of the proceeding.

14.2.2. Finding against respondent

If the administrative law judge finds that a respondent has engaged, or is about to engage, in a discriminatory housing practice, the administrative law judge shall issue an initial decision against the respondent and order such relief as may be appropriate. The relief may include, but is not limited to, the following:

14.2.2.a. The administrative law judge may order the respondent to pay damages to the aggrieved person, including damages caused by humiliation and embarrassment. Special damages shall be subject to prejudgment interest. Pursuant to the holding in Bishop Coal Co. v. Salyers, 380 S.E.2d 238 (W. Va. 1989), there shall be a cap on damages awarded for humiliation and embarrassment. With regard to each unlawful discriminatory practice committed by each respondent against each aggrieved person, damages for humiliation and embarrassment may not be in excess of this cap. The cap shall be in an amount to be periodically established by the commission, which amount shall be based upon a figure of two thousand five hundred dollars ($2,500), adjusted in accordance with the Consumer Price Index since 1989.

14.2.2.b. The administrative law judge may provide for injunctive or such other equitable relief as may be appropriate. No such order may affect any contract, sale, encumbrance or lease consummated before the issuance of the initial decision that involved a bona fide purchaser, encumbrancer or tenant without actual knowledge of the charge.

14.2.2.c. To vindicate the public interest, the administrative law judge may assess a civil penalty against the respondent.

14.2.2.c.1. The amount of the civil penalty may not exceed:

(A) Ten thousand dollars ($10,000), if the respondent has not been adjudged to have committed any prior discriminatory housing practice in any administrative hearing or civil action permitted under the West Virginia Fair Housing Act or any state, federal or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State or local governmental agency.

(B) Twenty-five thousand dollars ($25,000), if the respondent has been adjudged to have committed one other discriminatory housing practice in any administrative hearing or civil action permitted under the West Virginia Fair Housing Act, or any state, federal or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state, or local government agency, and the adjudication was made during the five year period preceding the date of filing of the charge.

(C) Fifty thousand dollars ($50,000), if the respondent has been adjudged to have committed two or more discriminatory housing practices in any administrative hearings or civil actions permitted under the West Virginia Fair Housing Act or any state, federal or local fair housing law, or in any

licensing or regulatory proceeding conducted by a federal, state, or local government agency, and the adjudications were made during the seven-year period preceding the date of the filing of the charge.

14.2.2.c.2. If the acts constituting the discriminatory housing practice that is the subject of the charge were committed by the same natural person who has previously been adjudged, in any administrative proceeding or civil action, to have committed acts constituting a discriminatory hosing practice, the time periods set forth in paragraphs (b)(3)(i) (B) and (C) of this section do not apply.

14.2.2.c.3. In a proceeding involving two or more respondents, the administrative law judge may assess a civil penalty as provided under paragraph (b) of this section against each respondent that the administrative law judge determines has been engaged or is about to engage in a discriminatory housing practice.

14.2.3. Finding in favor of respondent

If the administrative law judge finds that a respondent has not engaged, and is not about to engage, in a discriminatory housing practice, the administrative law judge shall make an initial decision dismissing the charge.

14.2.4. Date of issuance

The administrative law judge shall issue an initial decision within sixty (60) days after the end of the hearing, unless it is impracticable to do so. If the administrative law judge is unable to issue the initial decision within this time period (or within any succeeding sixty-day (60) period following the initial sixty day (60) period), the administrative law judge shall notify in writing all parties, the aggrieved person on whose behalf the charge was filed, and the deputy attorney general of the civil rights division, of the reasons for the delay. In no event shall the initial decision be issued more than twenty-five (25) or less than ten (10) days before the next regularly scheduled meeting of the commissioners.

14.3. Service of initial decision

Simultaneously with the issuance of the initial decision, the administrative law judge shall serve the initial decision on all parties, the aggrieved person on whose behalf the charge was filed, the attorney general, the executive director of the West Virginia Human Rights Commission, and upon each duly appointed commissioner of the West Virginia Human Rights Commission. The initial decision will include a notice stating that the initial decision will become the final decision of the commission unless

the commission issues a final decision under § 14.6. within thirty (30) days of the date of issuance of the initial decision.

14.4. Resolution of charge

At any time before the issuance of a final decision under § 14.6., the parties may submit an agreement resolving the charge. The agreement must be signed by the deputy attorney general for civil rights or his/her designee, the respondent, and the aggrieved person upon whose behalf the charge was issued. The administrative law judge shall accept the agreement by issuing an initial decision based on the agreed findings. The submission of an agreement resolving the charge constitutes a waiver of any right to challenge or contest the validity of a decision entered in accordance with the agreement.

14.5. Appeals to the West Virginia Human Rights Commission

14.5.1. Any party aggrieved by the initial decision of the administrative law judge may petition the commissioners for review of said decision, provided that the original and nine copies of a petition for review must be filed with the commission no later than five (5) days after the issuance of an initial decision.

14.5.2. A petition for review shall concisely describe any alleged error in the initial decision and state the grounds for the reversal or modification of the initial decision.

14.6. Final decision

14.6.1. Issuance of final decision by the commission

The commissioners of the West Virginia Human Rights Commission may review any finding of fact, conclusion of law, or order contained in the initial decision of the administrative law judge and issue a final decision in the proceeding. The commissioners may affirm, modify or set aside, in whole or in part, the initial decision or remand the initial decision for further proceedings. The commission shall serve the final decision on all parties no later than thirty (30) days from the date of issuance of the initial decision of the administrative law judge. The final decision shall be served on all parties, the aggrieved person on whose behalf the charge was filed and the attorney general.

14.6.2. No final decision by the commission

If the commission does not serve a final decision within the time period described above, the initial decision of the administrative law judge will become the final decision of the commission. For the purposes of this part, such a final decision

will be considered to have been issued thirty (30) days following the date of issuance of the initial decision.

14.6.3. Public disclosure

The commission shall make public disclosure of each final decision.

14.6.4. Decisions on remand

If the commission remands the decision for further proceedings, the administrative law judge shall issue an initial decision on remand within sixty (60) days of the date of issuance of the commission's decision, unless it is impractical to do so. If the administrative law judge is unable to issue the initial decision within this time period (or within any succeeding sixty-day (60) period following the initial sixty-day (60) period), the administrative law judge shall notify in writing the parties, the aggrieved person on whose behalf the charge was filed, and the executive director, of the reasons for the delay.

14.7. Action upon issuance of a final decision

14.7.1. Licensed or regulated businesses

14.7.1.a. If a final decision includes a finding that a respondent has engaged or is about to engage in a discriminatory housing practice in the course of a business that is subject to licensing or regulation by a federal, state or local governmental agency the executive director will notify the governmental agency of the decision by:

14.7.1.a.1. Sending copies of the findings of fact, conclusions of law and the final decision to the governmental agency by certified mail; and

14.7.1.a.2. Recommending appropriate disciplinary action to the governmental agency, including, where appropriate, the suspension or revocation of the license of the respondent.

14.7.1.b. The executive director will notify the appropriate governmental agencies within thirty (30) days after the date of issuance of the final decision, unless a petition for judicial review of the final decision as described in § 15.1 has been filed before the issuance of the notification of the agency. If such a petition has been filed, the executive director will provide the notification to the governmental agency within thirty (30) days of the date that the final decision is affirmed upon review. If a petition for judicial review is timely filed following the notification of the governmental agency, the

executive director will promptly notify the governmental agency of the petition and withdraw his or her recommendation.

14.7.2. Notification to the attorney general

If a final decision includes a finding that a respondent has engaged or is about to engage in a discriminatory housing practice and another final decision including such a finding was issued under this part within the five (5) years preceding the date of issuance of the final decision, the executive director will notify the attorney general of the decisions by sending a copy of the final decisions in each administrative proceeding.

14.8. Attorney fees and costs

Following the issuance of the final decision under § 14.6. finding that one or more respondents has engaged in an unlawful practice under the West Virginia Fair Housing Act, a prevailing complainant, aggrieved party or intervenor may apply for attorney's fees and costs. The administrative law judge will issue an initial decision awarding or denying such fees and costs. The initial decision will become the final decision of the commission unless the commission reviews the initial decision and issues a final decision on fees and costs within thirty (30) days. The recovery of reasonable attorney's fees and costs will be permitted as follows:

14.8.1. The respondent will be liable for the reasonable attorney fees of an aggrieved person for the services of such person's private counsel.

14.8.2. Where the case on behalf of the aggrieved person has been presented at hearing by the attorney general, the respondent will be liable for the reasonable attorney fees of the attorney general incurred in the preparation and presentation of the aggrieved person's case.

14.8.3. To the extent that an intervenor is a prevailing party, the respondent will be liable for reasonable attorney's fees unless special circumstances make the recovery of such fees and costs unjust.

§ 77-8-15 Judicial Review and Enforcement of Final Decision

15.1. Judicial review of final decision

15.1.1. Petition for review

Any party adversely affected by a final decision under § 14.6. may file a petition in the appropriate circuit court for review of the decision under W. Va. Code § 5-11A-13(h). The

petition must be filed within thirty (30) days of the date of issuance of the final decision.

15.1.2. No petition for review

If no petition for review is filed under paragraph (a) within forty-five (45) days from the date of issuance of the final decision, the findings of facts and final decision shall be conclusive in connection with any petition for enforcement described under § 15.2(a) filed thereafter by the commission, and in connection with any petition for enforcement described under § 15.2.

15.2. Enforcement of final decision

15.2.1. Enforcement by the commission

Following the issuance of a final decision under § 14.6., the commission may petition the appropriate circuit court for the enforcement of the final decision and for appropriate temporary relief or restraining order.

15.2.2. Enforcement by others

If before the expiration of sixty (60) days from the date of issuance of the final decision under § 14.6., no petition for review of the final decision has been filed, and the commission has not sought enforcement of the final decision as described in paragraph (a) of this section, any person entitled to relief under the final decision may petition the appropriate court for the enforcement of the final decision.

MARIO J. PALUMBO
ATTORNEY GENERAL

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OFFICE OF THE ATTORNEY GENERAL
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Antitrust & Consumer Protection Division
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Civil Rights Division
(304) 348-0646

Preneed Funeral Services
(304) 348-0303

Consumer Hotline
(800) 368-8808

May 29, 1992

HAND DELIVER

Judy Cooper, Director
Administrative Law Division
Office of the Secretary of State
Suite 157-K, State Capitol Complex
Charleston, West Virginia 25305

Re: Title 77, Series 8
Procedural Rules of the West
Virginia Human Rights Commission
Rules for the Processing of Complaints, etc.

Dear Ms. Cooper:

The West Virginia Human Rights Commission is filing the attached procedural Rules for the Processing of Complaints and Administrative Proceedings Under the West Virginia Fair Housing Act. Therefore, enclosed please find one copy of the following documents:

1. Secretary of State Form #1 (Notice of Public Hearing on Proposed Rule)
2. The emergency rule and a brief summary of the proposed rule
3. Written approval of the Commission's Super Secretary
4. The Fiscal Note

I have also attached additional copies of this packet of materials so that you may stamp them as "filed" or "received" and I may retain them for my file.

If I have failed to provide any required information or documents, please contact me. Thank you for your assistance in this matter.

Sincerely,

Paul R. Sheridan

PAUL R. SHERIDAN
SENIOR ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

PRS/jm
Enclosures