CIVIL RIGHTS, OFFICE OF[161]

[Prior to 7/23/25, see Civil Rights Commission[161]]

CHAPTER 1
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CHAPTER 1
RULES OF PRACTICE

[Prior to 1/13/88, see Civil Rights 240—1.2, Ch 9, Ch 10]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

161—1.1(216) Organization and administration.

1.1(1) *Organization.*

a. Commission. The Iowa civil rights commission is a seven-member body. Members are appointed by the governor pursuant to Iowa Code section 216.3.

b. Location. The Iowa civil rights commission, hereinafter referred to as "commission," is located on the First Floor, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319-1004; telephone (515)281-4121; toll-free in Iowa only 1-800-457-4416; facsimile transmission (fax) (515)242-5840. Office hours are 8 a.m. to 4:30 p.m. Monday through Friday, or the business hours set by the office of the governor or otherwise established by the legislature.

1.1(2) *Administration.* The executive director is responsible for the day-to-day administration of the commission's activities.

1.1(3) *Electronic attendance of commissioners.*

a. Notification. A commissioner wishing to attend the commission meeting by electronic means shall notify the executive director of this intent. The executive director will then take all reasonable measures to ensure that the necessary equipment is available at the site selected for the commission meeting. The commissioner attending by electronic means is responsible for ensuring that adequate equipment is available at the commissioner's location.

b. Public participation. Whenever any commissioners attend by electronic means, public access to the conversation of the commission will be allowed at the location of at least one of the commissioners. Unless good cause requires otherwise, the location where public access to the conversation is provided shall be a location reasonably accessible to the public. If the location is not reasonably accessible to the public, the nature of the good cause justifying inaccessibility shall be stated in the minutes.

c. Electronic attendance of multiple commissioners. If at the time a commissioner notifies the executive director of the intent to attend electronically that commissioner's electronic attendance would mean that four or more commissioners would be attending separately via electronic means, then that commissioner may not attend by electronic means unless the in-person attendance of any four of the commissioners attending the meeting at any of the available meeting sites is impossible or impracticable.

d. Conducting electronic meeting. Whenever four or more commissioners are separately attending a commission meeting by electronic means, the commission shall conduct the meeting in accordance with the following requirements:

(1) The commission shall keep detailed minutes of all discussion, all persons present and all action. The commission shall electronically record all proceedings in the meeting and retain such recordings for no less than one year from the date of the meeting.

(2) The minutes of the meeting shall include a statement explaining why a meeting in person was impossible or impracticable.

(3) The public notice of the meeting shall state the location of the meeting to be the location where public access to the conversation is provided.

[**ARC 8749B**, IAB 5/5/10, effective 6/9/10]

161—1.2(216) Commission procedure for rule making.

1.2(1) *Initiation of rule-making procedures.*

a. Any person or state agency may file a petition for rule making with the commission at its location as defined in 161—paragraph 1.1(1)"*b*." A petition is deemed filed when it is received by that office. The commission shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the commission an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE IOWA CIVIL RIGHTS COMMISSION

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	}	PETITION FOR RULE MAKING

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.

2. A citation to any law deemed relevant to the commission's authority to take the action urged or to the desirability of that action.

3. A brief summary of petitioner's arguments in support of the action urged in the petition.

4. A brief summary of any data supporting the action urged in the petition.

5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.

b. The commission shall act upon the request within 60 days after its submission in accordance with Iowa Code section 17A.7 as amended by 1998 Iowa Acts, chapter 1202.

c. The commission may initiate rule-making procedures upon its own motion in accordance with Iowa Code section 17A.4.

1.2(2) *Advice on possible rules before notice of proposed rule adoption.* In addition to seeking information by other methods, the commission may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)*"a,"* solicit comments from the public on a subject matter of possible rule making by the commission by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

1.2(3) *Notice of proposed rule making—contents.* At least 35 days before the adoption of a rule, the commission shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

a. A brief explanation of the purpose of the proposed rule;

b. The specific legal authority for the proposed rule;

c. Except to the extent impracticable, the text of the proposed rule;

d. Where, when, and how persons may present their views on the proposed rule; and

e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the commission shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the agency for the resolution of each of those issues.

1.2(4) *Public participation.*

a. Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the commission at its location as defined in 161—paragraph 1.1(1)*"b,"* or the person designated in the Notice of Intended Action.

b. Oral proceedings. The commission may, at any time, schedule an oral proceeding on a proposed rule. The commission shall schedule an oral proceeding on a proposed rule if, within 20 days after a published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the commission by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

(1) A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

(2) A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing the request.

(3) A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing the request.

c. Conduct of oral proceedings.

(1) Applicability. This paragraph applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)*"b"* as amended by 1998 Iowa Acts, chapter 1202, or paragraph 1.2(5)*"f."*

(2) Scheduling and notice. An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

(3) Presiding officer. The commission, a member of the commission, or another person designated by the commission who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the commission does not preside, the presiding officer shall prepare a memorandum for consideration by the commission summarizing the contents of the presentations made at the oral proceeding unless the commission determines that such a memorandum is unnecessary because the commission will personally listen to or read the entire transcript of the oral proceeding.

(4) Conduct of the proceeding. At an oral proceeding on a proposed rule persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the commission at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

1. At the beginning of the oral proceeding the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the commission decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

2. Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

3. To facilitate the exchange of information the presiding officer may, where time permits, open the floor to questions or general discussion.

4. The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

5. Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the commission.

6. The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

7. Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questions of participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

8. The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to adjournment of the oral presentations.

d. Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the commission may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

e. Accessibility. The commission shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the commission at its location as defined in 161—paragraph 1.1(1)"*b*" in advance to arrange access or other needed services.

1.2(5) *Regulatory analysis.*

a. Definition of small business. A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10.

b. Qualified requesters for regulatory analysis—economic impact. The commission shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4(2a) after a proper request from:

(1) The administrative rules coordinator;

(2) The administrative rules review committee.

c. Qualified requesters for regulatory analysis—business impact. The commission shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b) after a proper request from:

(1) The administrative rules review committee,

(2) The administrative rules coordinator,

(3) At least 25 or more persons who sign the request provided that each represents a different small business,

(4) An organization representing at least 25 small businesses. That organization shall list the name, address and phone number of not less than 25 small businesses it represents.

d. Time period for analysis. Upon receipt of a timely request for a regulatory analysis the commission shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10(4).

e. Contents for request. A request for a regulatory analysis is made when it is mailed or delivered to the commission. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1).

f. Contents of concise summary. The contents of the concise summary shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(4,5).

g. Publication of a concise summary. The commission shall make available to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10(5).

h. Regulatory analysis contents—rules review committee or rules coordinator. When a regulatory analysis is issued in response to written request from the administrative rules review committee or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2*a*), unless a written request expressly waives one or more of the items listed in the section.

i. Regulatory analysis contents—substantial impact on small business. When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b).

1.2(6) *Fiscal impact statement.*

a. A proposed rule that mandates additional combined expenditures exceeding $100,000 by all affected political subdivisions or agencies or entities which contract with the political subdivisions to provide service must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

b. If the commission determines at the time it adopts a rule that a fiscal impact statement upon which the rule is based contains errors, the commission shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

1.2(7) *Time and manner of rule adoption.*

a. Time of adoption. The commission shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the commission shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

b. Consideration of public comment. Before the adoption of a rule, the commission shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

c. Reliance on commission expertise. Except as otherwise provided by law, the commission may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

1.2(8) *Variance between adopted rule and published notice of proposed rule adoption.*

a. The commission shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

(1) The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and

(2) The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and

(3) The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

b. In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question the commission shall consider the following factors:

(1) The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;

(2) The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and

(3) The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

c. The commission shall commence a rule-making proceeding within 60 days of receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the commission finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within 3 days of its issuance.

d. Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the commission to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

1.2(9) *Concise statement of reasons.*

a. General. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the commission shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the commission's office as defined in 161—paragraph 1.1(1)*"b."* The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

b. Contents. The concise statement of reasons shall contain:

(1) The reasons for adopting the rule;

(2) An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;

(3) The principal reasons urged in the rule-making proceeding for and against the rule, and the commission's reasons for overruling the arguments made against the rule.

c. Time of issuance. After a proper request, the commission shall issue a concise statement of reasons by the time the rule is adopted or 35 days after receipt of the request, whichever is later.

1.2(10) *Contents, style, and form of rule.*

a. Contents. Each adopted rule by the commission shall contain the text of the rule and, in addition:

(1) The date the commission adopted the rule;

(2) A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code section 17A.4(1)*"b"* as amended by 1998 Iowa Acts, chapter 1202, or the commission in its discretion decides to include such reasons;

(3) A reference to all rules repealed, amended, or suspended by the rule;

(4) A reference to the specific statutory or other authority authorizing adoption of the rule;

(5) Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;

(6) A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by Iowa Code section 17A.4(1)*"b"* as amended by 1998 Iowa Acts, chapter 1202, or the commission in its discretion decides to include such reasons; and

(7) The effective date of the rule.

b. References to materials not published in full. When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the commission shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter, may be obtained from the commission. The commission will provide a copy of that full text at actual cost upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

At the request of the administrative code editor, the commission shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

c. Style and form. In preparing its rules, the commission shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

1.2(11) *Filing of rules.* The commission shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the agency shall use the standard form prescribed by the administrative rules coordinator.

1.2(12) *Effectiveness of rules prior to publication.*

a. Grounds. The commission may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The commission shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

b. Special notice. When the commission makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3), the commission shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the

rule's indexing and publication. The term "all reasonable efforts" requires the commission to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the following: the effectiveness of the rule under the circumstances, the various alternatives available for this purpose, the comparative costs to the commission of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice, or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of 1.2(12)*"b."*

1.2(13) *Review by commission of rules.*

a. Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the commission to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the commission shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The commission may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

b. In conducting the formal review, the commission shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the commission's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the commission or granted by the commission. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the commission's report shall be sent to the administrative rules review committee.

[**ARC 8749B**, IAB 5/5/10, effective 6/9/10]

161—1.3(216) Procedures for oral or written presentations.

1.3(1) Except where oral or written presentations are deemed unnecessary by the commission in accordance with section 17A.4(2), the commission shall allow for the submission of oral or written presentations, or both, prior to its adoption of any rules.

1.3(2) Interested persons shall have 20 days from the date of publication of notice in the Iowa Administrative Bulletin to submit written requests for oral presentations or to submit with presentations.

1.3(3) Notice of date, time and place of oral presentations by requesting parties will be published by appropriate media at least 20 days in advance with specific notice to requesting parties given by certified mail.

1.3(4) Interested parties may be limited to submitting written presentations at the discretion of the commission except when oral presentations are required by Iowa Code section 17A.4(1)*"b."*

161—1.4(216) Procedure for obtaining declaratory orders.

1.4(1) *Petition for declaratory order.* Any person may file a petition with the commission for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the commission, at its location as defined in 161—paragraph 1.1(1)*"b."* A petition is deemed filed when it is received by that office. The commission shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the commission an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA CIVIL RIGHTS COMMISSION

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	}	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided by 1.4(7).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

1.4(2) *Notice of petition.* Within 15 days after receipt of a petition for a declaratory order, the commission shall give notice of the petition to all persons not served by the petitioner pursuant to 1.4(6) to whom notice is required by any provision of law. The commission may also give notice to other persons.

1.4(3) *Intervention.*

a. Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 30 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

b. Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the commission.

c. A petition for intervention shall be filed at the commission office. Such a petition is deemed filed when it is received by that office. The commission will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA CIVIL RIGHTS COMMISSION

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	}	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

(1) Facts supporting the intervenor's standing and qualifications for intervention.

(2) The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.

(3) Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.

(4) A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.

(5) The names and addresses of any additional persons, or a description of any additional class of persons known by the intervenor to be affected by, or interested in, the questions presented.

(6) Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

1.4(4) *Briefs.* The petitioner or any intervenor may file a brief in support of the position urged. The commission may request a brief from the petitioner, any intervenor, or from any other person concerning the questions raised.

1.4(5) *Inquiries.* Inquiries concerning the status of a declaratory order proceeding may be made to the executive director at the commission's office.

1.4(6) *Service and filing of petitions and other papers.*

a. When service required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

b. Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the commission at its location as defined in 161—paragraph 1.1(1)*"b."* All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the Iowa civil rights commission.

c. Method of service, time of filing, and proof of mailing. Method of service shall be by regular mail. Time of filing and proof of mailing shall be as provided by 161—subrule 3.5(8).

1.4(7) *Consideration.* Upon request by petitioner, the commission must schedule a brief and informal meeting between the original petitioner, all intervenors, and the commission, a member of the commission, or a member of the staff of the commission, to discuss the questions raised. The commission may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the commission by any person.

1.4(8) *Action on petition.*

a. Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the executive director or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

b. The date of issuance of an order or of a refusal to issue an order is as defined in Iowa Code section 216.17(1).

c. Within 20 days of the issuance of a declaratory order, the petitioner or intervenors may appeal that order to the commissioners. The commissioners will consider the appeal at a subsequent commissioners' meeting and will either affirm, overturn, or remand the order.

1.4(9) *Refusal to issue order.*

a. The commission shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

(1) The petition does not substantially comply with the required form.

(2) The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the commission to issue an order.

(3) The commission does not have jurisdiction over the questions presented in the petition.

(4) The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.

(5) The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

(6) The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

(7) There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

(8) The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

(9) The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

(10) The petitioner requests the commission to determine whether a statute is unconstitutional on its face.

b. A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

c. Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

1.4(10) *Contents of declaratory order—effective date.* In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

1.4(11) *Copies of orders.* A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

1.4(12) *Effect of declaratory order.* A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the commission, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the commission. The issuance of a declaratory order constitutes final agency action on the petition.

161—1.5(216) Forms. Forms commonly used by the commission are generally available through the commission's Web site or by telephoning the commission staff.

1.5(1) *"Charge of Discrimination,"* EEOC 5c, for a complaint alleging a discriminatory or unfair practice or act in all jurisdictional areas except housing.

1.5(2) *"Housing Discrimination Complaint,"* HUD 903, for a complaint alleging a discriminatory or unfair practice or act in the jurisdictional area of housing.

1.5(3) *"Authorization Release Form,"* to secure authorization for relevant client information.

1.5(4) *"Administrative Release Form,"* to request a "right to sue" letter.

1.5(5) *"Request for Withdrawal of Charge of Discrimination,"* is used by the complainant to withdraw the charge of discrimination previously filed.

1.5(6) *"Amended complaint,"* to amend the charge of discrimination previously filed.

1.5(7) *"Forms notebook."* Other forms commonly used by the commission or its staff are compiled within a "forms notebook." The notebook is available for inspection by the public at the commission offices. Copies of the forms notebook can be obtained for an appropriate copying charge.

1.5(8) *"Purpose of forms."* The existence of standard forms is for the convenience of the commission, the public, and the parties. The existence of a standard form does not imply that the purpose of the standard form cannot be accomplished through a document in a different form.

[**ARC 8749B**, IAB 5/5/10, effective 6/9/10]

161—1.6(216) Referral and deferral agencies.

1.6(1) *Statement of purpose.* It is the purpose of the commission, in adopting these rules to promote the efficient enforcement of the Act. To this end, the commission will use referral and deferral agreements to encourage agencies with similar powers and jurisdiction to:

a. Develop procedures with remedies necessary to ensure the protection of rights secured by the Iowa Civil Rights Act.

b. Increase the efficiency of their operations.

c. Cooperate more fully with the commission in the sharing of data and resources, and

d. Coordinate investigations and conciliations with the commission in order to eliminate needless duplication.

1.6(2) *Definitions.*

a. *"Agency"* refers to any agency of municipal government established by ordinance for the purpose of eliminating discrimination on any basis protected by the Act or any state or federal governmental unit with jurisdiction over allegations of discrimination that is capable of obtaining remedies similar to those obtainable by the commission.

b. *"Referral"* means the process by which the commission cross-files a charge of discrimination with a referral agency, which extinguishes the legal ability of the commission to process the charge; provided, however, that the referral agency accepts the referred charge and that the commission has the reciprocal right to accept or reject charges cross-filed by the referral agency.

c. *"Referral agency"* means any agency of local government that has been awarded that status by contract with the commission.

d. *"Deferral"* refers to the process whereby the commission notifies an agency of local, state, or federal government that a complaint has been filed with the commission and that the commission will postpone its investigative activities for a period of 60 days while the deferral agency investigates and attempts to resolve the matter. Extensions of this time period may be granted by the commission or the executive director when just cause is shown by the agency for the time extension requested.

e. *"Deferral agency"* means any agency so designated by contract pursuant to these rules.

1.6(3) *Procedure for obtaining referral status.*

a. *Guidelines for designation.* The executive director will evaluate the applications of agencies and may designate agencies as referral agencies where they conform to the following guidelines:

(1) The agency should have professional staff to enable it to comprehensively investigate complaints and to ensure the processing of the charges expeditiously.

(2) The ordinance or enabling legislation under which the agency is established must provide at a minimum the same rights and remedies to discrimination as available under the Act, and

(3) The enabling legislation of the agency shall provide, at a minimum, that the agency may hold public hearings, issue cease and desist orders, and award damages to injured parties which shall include, but are not limited to, actual damages.

b. *Application.* Any agency desiring to be designated as a referral agency by the commission may send a letter of application to the executive director of the commission. Attached to the application must be a copy of the agency's enabling ordinance, a list of its investigatory personnel, the average number of hours worked by each per week, and a report for the previous 12-month period detailing the following:

(1) The number of cases filed with the agency,

(2) The number of probable cause and no probable cause findings,

(3) The number of cases successfully conciliated,

(4) The number of cases taken to public hearing,

(5) The average length of time spent investigating each case,

(6) The cumulative remedies obtained for the previous 12-month period and average remedy obtained per case,

(7) An assessment of the quality of the agency's investigation,

(8) The agency's standards to preserve quality investigations, and

(9) The status of the agency's caseload.

c. Rejection of application. Where the executive director determines that an agency does not qualify as a referral agency, the director shall so inform the agency in writing along with the reasons for the agency's rejection.

If the reasons for the agency's rejection are corrected, the agency will then be designated as a referral agency. The executive director's decision may be appealed to the commission at its subsequent regular meeting.

d. Designation and contract. Where the executive director determines that an agency is qualified as a referral agency, the director will prepare a contract between the commission and the agency containing the terms on which cases will be referred. Upon execution of the contract, the executive director will designate the agency as a referral agency.

e. Terms of the referral contract. The referral contract shall be negotiated with the referral agency, but shall include the following:

(1) Terms prohibiting a complainant who has filed with the commission from cross-filing with a referral agency and vice versa,

(2) Terms permitting the commission to refer complaints filed with it to a referral agency for processing and vice versa,

(3) Terms prohibiting the commission from processing a charge referred to and accepted by the referral agency and vice versa,

(4) Terms permitting the commission or a referral agency to reject a charge referred to it for processing,

(5) Terms ending the contract after two years, subject to renegotiation, and

(6) Any other terms mutually agreed upon.

1.6(4) *Procedure for obtaining deferral status.*

a. Application. Any agency desiring to be designated as a deferral agency by the commission may send a letter of application to the executive director of the commission. Attached to the application must be a copy of the agency's enabling legislation or grant of jurisdiction, a list of its personnel and statement indicating their permanent or part-time status, their functions, and a summary of the agency's prior efforts at preventing and eliminating discrimination. The application must also explain how the agency is capable of obtaining remedies substantially similar to those available under the Act.

b. Guidelines for designation. The executive director will evaluate the applications of all agencies and may designate deferral agencies where the agencies conform to the following guidelines:

(1) The agency should have available resources to enable it to investigate complaints to ensure processing within a reasonable period of time,

(2) The agency's enabling legislation or grant of jurisdiction must permit it to obtain substantially the same remedies as are available under the Act,

(3) The agency must be able to make a diligent effort to investigate and resolve the complaints filed with it, and

(4) The agency is capable of obtaining remedies substantially similar to those available under the Act by informal means.

c. Rejection of application. Where the executive director determines that an agency does not qualify as a deferral agency, the director shall so inform the agency in writing along with the reasons for the agency's rejection.

If the reasons for the agency's rejection are corrected, the agency will then be designated as a deferral agency. The executive director's decision may be appealed to the commission at its subsequent regular meeting.

d. Designation and contract. Where the executive director determines that an agency is qualified as a deferral agency, the director will prepare a contract between the commission and the agency containing the terms on which cases will be deferred. After execution of the contract, the executive director will designate the agency as a deferral agency.

e. Terms of the deferral contract. The deferral contract shall include, subject to negotiations with the agency, the following:

(1) The commission will agree to notify the deferral agency of all complaints filed with the commission which are within the deferral agency's jurisdiction, except where a complainant requests in written form that the deferral agency not be notified.

(2) The deferral agency will agree to aid all complainants whose complaints come within the commission's jurisdiction in completing the commission's complaint forms as well as notarizing them and forwarding the fully executed forms to the commission where the necessity to file a formal complaint exists. If, however, a matter may be resolved informally more expeditiously the deferral agency will simply notify the commission by letter of the complaint and resolution obtained. "Informally resolved complaints" shall refer to complaints that can be resolved within ten days.

(3) The commission will agree to postpone its investigation for at least 60 days of any complaint filed with a deferral agency unless otherwise agreed to by both parties. These waiver agreements will be made on an individual case basis.

(4) The agency will agree not to disclose the filing of a complaint or confidential information pertaining to a complaint until the complaint has been officially set for public hearing.

(5) The commission and the deferral agency shall share copies of all findings, case summaries, and conciliation agreements.

(6) Where a complaint is on file with a deferral agency, the commission will allow the deferral agency access to the contents of the complainant's file provided that the deferral agency allows the commission like privileges and has not previously disclosed confidential information prior to public hearing.

(7) Photocopying of materials from commission files for use by a deferral agency is solely at the discretion of the commission staff, but will not be unreasonably denied. When the commission copies from the agency's file, the agency shall be reasonably compensated for copying costs.

(8) The commission will give substantial weight to the findings of a deferral agency where pertinent and relevant factual evidence exists to support those findings.

(9) The commission will not necessarily be bound by the agency's conclusions of law.

(10) Where a deferral agency reaches a finding of probable cause to support an allegation of discrimination the contract may permit the agency to pursue conciliation, or to refer the case back to the commission for conciliation. The contract may also permit an agency that has attempted conciliation to refer that case back to the commission for public hearing. In no case where a case has been referred back to the commission will it be referred back to the agency. Where a case is conciliated or a hearing is held by the agency or the commission, both will be bound by the final determination.

(11) The period for which the contract will be in effect shall not exceed two years, subject to renegotiation.

(12) The contract may contain other terms agreed to by the parties.

These rules are intended to implement Iowa Code chapter 216.

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[1] Effective date of 161—1.1(1)*"b,"* 1.5(7) and 1.5(8) delayed 70 days by the Administrative Rules Review Committee at its meeting held March 9, 1993; delayed until adjournment of the 1994 Session of the General Assembly by this Committee May 11, 1993.

CHAPTER 2
GENERAL DEFINITIONS

[Prior to 1/13/88, see Civil Rights 240—1.1(601A)]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

161—2.1(216) Definitions.

2.1(1) Wherever "Act" is used in rules of the commission it shall mean the Iowa Civil Rights Act of 1965, as amended (Iowa Code chapter 216).

2.1(2) Unless indicated otherwise, the terms "court," "person," "employment agency," "labor organization," "employer," "employee," "unfair practice," or "discriminatory practice," "commission," "commissioner," and "public accommodation" shall have the same meaning as set forth in Iowa Code chapter 216.

2.1(3) The term "chairperson" shall mean the chairperson of the Iowa civil rights commission; and the term "commissioner" shall mean any member, including the chairperson, of the commission. The vice chairperson of the commission shall serve, in the absence of the chairperson, as acting chairperson; and, in the absence of the chairperson, the vice chairperson shall have all the duties, powers and authority conferred upon the chairperson by the Act and commission rules. At all times it shall be necessary that a quorum be present before the commission can transact any official business.

2.1(4) The term "complainant" shall mean the person, as defined in Iowa Code subsection 216.2(11), who makes a complaint of discrimination with the commission.

2.1(5) The term "executive director" shall mean an employee of the commission, selected by and serving at the will of the governor, who shall have the duties, powers and authority conferred upon the director by law.

2.1(6) Except as provided in paragraph *"b,"* the term "issuance" shall mean mailing by regular mail or, when required, U.S. certified mail, a document or letter indicating a decision or other administrative action of the commission. When certified mail is required, the date of issuance of a decision or an administrative action of the commission shall be the date the commission mails by U.S. certified mail a document or letter indicating the decision or action. When mailing is by regular mail, the date of mailing is presumed to be the date on the cover letter accompanying the administrative action or decision unless the date is shown to be in error.

a. Except as provided in paragraph *"b,"* the verb "issue" shall mean to mail by regular mail or, when required, by certified mail, a document or letter indicating a decision or other administrative action of the commission. When certified mail is required, the date an administrative action or decision is "issued" shall be the date the commission mails by U.S. certified mail a document or letter indicating the administrative decision or action. When mailing is by regular mail, the date of mailing is presumed to be the date on the cover letter accompanying the document or letter indicating the administrative decision or action, unless this date is shown to be in error.

b. When used to refer to a decision to administratively close a case, the term "issuance" and the verb "issue" can mean either the mailing of the document indicating administrative closure by regular mail or the mailing of that document by certified mail. The date an administrative closure is issued is the date the administrative closure is mailed to the complainant. When mailing is by regular mail, the date of mailing is presumed to be the date on the cover letter accompanying the administrative closure unless this date is shown to be in error. When certified mail is required, the date an administrative action or decision is "issued" shall be the date the commission mails by U.S. certified mail a document or letter indicating the decision or action.

c. When local mail is permissible, the date of mailing is presumed to be the date on the cover letter.

When used to refer to a subpoena, the term "issuance" and the verb "issue" shall each mean the signing of the subpoena by the issuing authority. The date a subpoena becomes effective is the date service is completed.

2.1(7) The term "respondent" shall mean the person, as that term is defined in Iowa Code subsection 216.2(11), against whom the complaint of discrimination is made with the commission.

2.1(8) The term "right to sue" shall mean the release issued by the commission stating that the complainant has a right to commence an action in the district court. The term "right to sue" is the same as the "release" or "administrative release" described in Iowa Code section 216.16 and these terms may be used interchangeably.

2.1(9) The term "verified" shall mean (a) sworn to or affirmed before a notary public, or other person duly authorized by law to administer oaths and take acknowledgments, or (b) supported by an unsworn declaration which recites that the person certifies the matter to be true under penalty of perjury, states the date of the statement's execution and is subscribed by the person. Such an unsworn declaration may be in substantially the following form: "I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct. Executed on (date). (Signature)."

2.1(10) Final actions. The following procedures shall constitute final actions of the commission:

a. The term "administratively closed" shall mean that the commission will cease action on a complaint because, in the opinion of the investigating official, no useful purpose would be served by further efforts. Administratively closing a case is appropriate in circumstances such as the following: The commission staff has not been successful in locating a complainant after diligent efforts; the respondent has gone out of business; a right-to-sue letter has been issued; or after a probable cause decision has been made, it is determined that the record does not justify proceeding to public hearing.

b. The term "no jurisdiction" shall mean that the alleged discriminatory act or practice is not one that is prohibited by the Act or where the complaint does not conform to the requirements of the Act.

c. The term "no probable cause finding" shall mean the procedure by which a complainant and respondent are notified that the investigating official has found that there is no probable cause to believe that discrimination exists after reviewing an investigation of a complaint.

d. The term "satisfactorily adjusted" shall mean that the complainant has indicated in writing that the complaint has been resolved to the satisfaction of the complainant, and that no further action is desired from the commission. Whenever the offer of adjustment by a respondent is acceptable to the investigating official, but not to the complainant, the commission may close the case as satisfactorily adjusted. In a case which has been determined by the commission as having probable cause, the respondent's signature must be obtained before the case can be considered to be satisfactorily adjusted.

e. The term "successfully conciliated" shall mean that a written agreement has been executed on behalf of the respondent, on behalf of the complainant, and on behalf of the commission, the contents of which are designed to remedy that alleged discriminatory act or practice and any other unlawful discrimination which may have been uncovered during the course of the investigation.

f. The term "withdrawn" shall mean that a complainant has indicated in writing the desire that no further action be taken by the commission regarding the complaint.

2.1(11) Construction of rules. The rules and regulations promulgated by the Iowa civil rights commission shall be liberally construed to effectuate the purposes and provisions of Iowa Code chapter 216.

2.1(12) The term "terms and conditions of employment," shall include but is not limited to medical, hospital, accident and life insurance or benefits, leave, vacations, and other terms, conditions, and privileges of employment.

[1]**2.1(13)** The term "injury" shall mean a loss of pecuniary benefit, rights, or any offense against a person's dignity.

2.1(14) The term "certified mail" shall mean delivery by United States Postal Service mail designated as certified mail.

2.1(15) The term "local mail" shall mean Iowa state government local (interoffice) delivery. Local mail is sent and delivered between state government offices in an envelope designated "Local," without the need for postage.

2.1(16) The term "mail or regular mail" shall mean delivery by United States Postal Service mail delivered at regular speed or delivery by courier service.

2.1(17) The term "electronic filing" shall mean submission of documents via the online case management system established and utilized by the commission or via another online system. The commission may require proof to ensure the accuracy and validity of online filings, including additional

written verification of the veracity and accuracy of documents filed online. Senders shall include in the subject line of the E-mail the case number, if one exists, and a brief description of the submission. Filings by E-mail must be delivered to a valid E-mail address of current commission staff.

2.1(18) The term "electronic signature" shall mean that a person attests to the validity of the electronic documents. Electronic signatures accompany various forms of electronic submissions including, but not limited to, E-mails and submissions made online through the case management system. The commission may permit and accept electronic signatures in E-mails, depending on the type of document. An electronic signature in the case management system consists of a person's name typed and submitted into the designated field.

2.1(19) The terms "written" and "in writing" shall mean the creation of words, phrases, or sentences by any means including, but not limited to, pen and paper, typewriter text, computer discs, computer text, electronic text and any other medium.

[**ARC 8746B**, IAB 5/5/10, effective 6/9/10; **ARC 8748B**, IAB 5/5/10, effective 6/9/10; **ARC 8747B**, IAB 5/5/10, effective 6/9/10]

[1] Objection to 2.1(8) [Prior to 1/13/88 numbered as 1.1(9)] reimposed by ARRC 4/20/88, republished 5/4/88, see full text of objection on following page.

These rules are intended to implement Iowa Code chapter 216.

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[Filed ARC 8747B (Notice ARC 8576B, IAB 3/10/10), IAB 5/5/10, effective 6/9/10]

On July 11th, 1979, the administrative rules review committee voted the following objections:

The committee objects to ARC 0192, item 1, appearing in Vol. 1, IAB 23 (4-18-79), relating to the definition of terms, on the grounds these provisions are beyond the authority of the commission and unreasonable. Specifically, the committee is concerned with subrules 1.1(8) and 1.1(9) appearing under item 1. Subrule 1.1(8) provides:

The term "retirement plan and benefit system" as used in section 601A.12 of the Code relates only to the discontinuation of employment pursuant to the provisions of such retirement plan or system. A retirement plan or benefit system shall be limited to those plans or systems where contributions are limited to those plans or systems where contributions are based upon anticipated financial costs of the needs of the retiree.

It is the opinion of the committee this subrule exceeds the authority of the commission in that it is an overbroad interpretation of §601A.13, the Code. That section in essence exempts from the provisions of the Act retirement plans or benefit systems which discriminate on the basis of age or sex, unless the plan is a "mere subterfuge". The exemption does not appear limited to plans or systems "relating only to the discontinuation of employment" or those "where contributions are based upon the anticipated financial costs of the retiree" as the subrule provides. Under the subrule, a plan or system which fails to meet either of the above criteria would apparently automatically be considered unfair discrimination. If the General Assembly had intended this result it would have so provided within the Act.

It is further the opinion of the committee subrule *1.1(9) defining as "injury", for which damages may be awarded, an offense against a person's dignity, is unreasonable in that it provides no ascertainable standard to determine what damage the offended party has suffered. Under the provisions of §601A.15(8) *"a"*(8) the commission clearly has the authority to award damages for an injury. The committee believes this term to mean that the party has been harmed in some way that damage received can be measured and appropriate recompense awarded for that damage. Dignity, like beauty, is in the eye of the beholder. Absent a showing that physiological or psychological damage has resulted from an "offense against a person's dignity", it appears impossible to accurately measure the financial equivalent of such an injury or to award appropriate damages.

[1] The Administrative Rules Review Committee at its May 21, 1979, meeting delayed the effective date of 240—subrules 1.1(7) to 1.1(9), 1.3(1), 1.8(2) and rules 1.16 and 1.17 70 days.

[2] The Administrative Rules Review Committee at its February 11, 1988, meeting delayed the effective date of subrule 2.1(8) 70 days.

[3] Effective date of 161—2.1(4), 2.1(6) to 2.1(11) delayed 70 days by the Administrative Rules Review Committee at its meeting held March 9, 1993; delayed until adjournment of the 1994 Session of the General Assembly by this Committee May 11, 1993.

[4] Renumbered as 2.1(8), IAC 1/13/88; 2.1(8) renumbered as 2.1(13), IAC 2/17/93.

Note: Iowa Code chapter 601A renumbered as chapter 216 in 1993 Iowa Code.

CHAPTER 3
COMPLAINT PROCESS

[Prior to 1/13/88, see Civil Rights 240—1.3 to 1.7, 1.16, 1.17]

Chapter rescission date pursuant to Iowa Code section 17A.7: 9/25/29

161—3.1(216) Initiation of complaint.

3.1(1) *Contents of complaint.* Each complaint should contain the following:

a. The full name, address, and phone number of the person making the charge;

b. The full name and address of each respondent;

c. A clear and concise statement of the facts constituting each alleged discriminatory practice, including pertinent dates, where known;

d. Where employment discrimination is alleged, the approximate number of respondent's employees.

3.1(2) *Technical defects in complaint.* A complaint is sufficient when it includes a written statement that identifies the parties and generally describes the alleged discriminatory actions or practices. Complaints may be amended to cure technical defects or omissions including verification. Such amendments will relate back to the date the complaint was filed.

[**ARC 8198C**, IAB 8/21/24, effective 9/25/24]

161—3.2(216) Timely filing of the complaint.

3.2(1) All alleged continuous violations that constitute a pattern or practice are timely if the most recent act occurred within 300 days of filing the complaint.

3.2(2) The 300-day filing period is subject to waiver, estoppel, and equitable tolling. Equitable tolling depends upon the facts and circumstances of the case and suspends the running of the filing period for as long as the grounds for tolling exist.

[**ARC 8198C**, IAB 8/21/24, effective 9/25/24]

161—3.3(216) Jurisdictional review. Upon receipt of a submitted complaint form, the executive director or designee shall review the form to determine whether the agency has jurisdiction. A no jurisdiction determination constitutes a final agency action for purposes of judicial review.

[**ARC 8198C**, IAB 8/21/24, effective 9/25/24]

161—3.4(216) Amendment process.

3.4(1) *Amendment of complaint.*

a. Complaints or any part thereof may be amended by the complainant or agency prior to the contested case hearing. Complaints may be amended to include additional allegations discovered during investigation. The issues at the contested case hearing shall include facts uncovered during investigation and are not limited to the allegations in the original complaint.

b. Amendments alleging additional discriminatory acts or practices do not relate back to the original complaint. These amendments will only be permitted if the amended complaint could have been filed as a timely complaint on the date the amended complaint was filed.

c. At the contested case hearing, the administrative law judge may amend the complaint at their discretion. Where an amendment is made, the administrative law judge may grant the respondent a continuance if needed to prepare to defend the amended charge.

3.4(2) *Amendments adding successor respondents.* The complainant or the agency may at any time amend a complaint to add an alleged successor as a respondent. If a successor is added after issuance of the notice of hearing, the administrative law judge may grant a continuance to allow the successor to prepare its defense.

[**ARC 8198C**, IAB 8/21/24, effective 9/25/24]

161—3.5(216) Notice of the complaint. After jurisdiction is established, the agency will serve a copy of the complaint upon the respondent within 20 days by mail or electronic mail. In the absence of a response from the first named respondent within 90 days, the agency shall serve the complaint on the first-named respondent by certified mail within 20 days and inform complainant by letter of acknowledgment of the

right to withdraw the complaint or to request an administrative release to commence the complainant's own action in Iowa district court in accordance with Iowa Code section 216.16.
[**ARC 8198C**, IAB 8/21/24, effective 9/25/24]

161—3.6(216) Preservation of records.

3.6(1) *Duty to preserve.* When a complaint has been served on a respondent, the respondent shall preserve all records relevant to the investigation until the complaint is finally adjudicated, including but not limited to:

a. Any books, papers, documents, applications, forms, or records of any form that are relevant to the scope of the investigation.

b. Records relating to the complainant, other employees, applicants or members holding or seeking positions similar to that held or sought by the complainant.

c. Records relating to other applicants for the same position or membership as the complainant.

3.6(2) *Failure to preserve.* At a contested hearing, the administrative law judge may determine a party or agent of the party destroyed evidence relevant to the investigation. The administrative law judge may infer that the destroyed evidence was adverse to the party who destroyed the evidence or whose agent destroyed the evidence. The administrative law judge shall determine whether the destruction was done at a time when the party or agent knew or should have known that the evidence destroyed was relevant to the investigation and whether the explanation for the destruction is unsatisfactory.
[**ARC 8198C**, IAB 8/21/24, effective 9/25/24]

161—3.7 to **3.11** Reserved.

161—3.12(216) Mediation. Mediation is a free service offered by the agency. Mediation is available to all parties irrespective of representation by counsel. Mediation may encompass all issues in the case that could be investigated. If the parties agree to seek and obtain a global settlement not limited to a resolution of the civil rights issues, the mediation may be expanded to include these collateral claims.
[**ARC 8198C**, IAB 8/21/24, effective 9/25/24]

161—3.13 Reserved.

161—3.14(216) Document submission process.

3.14(1) *Methods of filing.* Any document, including a complaint of discrimination, may be filed by any one of the following methods:

a. By in-person delivery to the agency office during set office hours.

b. By regular or certified mail.

c. By fax. For fax transmissions, the sender may be billed a reasonable fee for each page in excess of five pages.

d. By electronic mail to the agency-established electronic mail address.

3.14(2) *Date of filing.* The date on which any document is deemed to be filed with the agency is determined according to the following:

a. On the date of in-person delivery.

b. Any document received by U.S. mail will be filed as of the mailing date pursuant to subrule 3.14(3).

c. Any document received by fax will be filed as of the date shown on the face of the fax.

d. Any document received by electronic mail will be filed as of the date received.

3.14(3) *Proof of mailing.* Proof of mailing includes either a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form: "The undersigned certifies under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Iowa Office of Civil Rights, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321, and to the names and addresses of the persons listed below by depositing a copy thereof (in a United States post office mailbox with correct postage properly affixed or state interoffice mail). (Date) (Signature)."

3.14(4) *Conflict among proofs of mailing.* The date of mailing is the date shown by the postmark. In the absence of a legible postmark, the date of mailing is the date shown by the postage meter mark. In the absence of both a legible postmark and a legible postage meter mark, the date of mailing is the date shown by the affidavit, certificate, or certification of mailing.
[**ARC 8198C**, IAB 8/21/24, effective 9/25/24]

161—3.15 to **3.25** Reserved.

161—3.26(216) Initial investigation of complaint—tier one investigation.

3.26(1) Questionnaire. After receipt of a complaint, the agency may mail to the parties written questionnaires. Complainant and respondent may provide responses in person, by mail or electronic mail.

3.26(2) Responses to the questionnaire.

a. Questionnaire responses can include written position statements. Questionnaire responses must be accompanied by supportive evidence. Attorney arguments are not considered admissible evidence. Supportive evidence should address the complainant's allegations and how individuals similarly situated to the complainant were treated.

b. Questionnaire responses are due 30 days from the mailing of the questionnaire. One oral or written request extension of 30 days or less will be granted on an informal basis without notice to the non-requesting party. A party may assume the first 30-day extension request is approved, unless otherwise notified. Any further request for extension may be subject to review by the executive director or designee and will be granted upon a showing of extenuating circumstances.

3.26(3) Failure to respond.

a. Complainant. A complaint may be administratively closed if a complainant fails to respond to questionnaires.

b. Respondent. A complaint may proceed to further investigation if respondent fails to submit questionnaire responses with supportive evidence.

3.26(4) Suggested procedure in answering questionnaires will be provided in the cover letter to the questionnaires.

3.26(5) The tier one investigation process will determine whether further investigation is needed. If further investigation is not warranted, the complaint will be administratively closed. Further processing is warranted when the submitted information indicates a reasonable possibility of a probable cause determination or the legal issues in the complaint need development. Respondent's failure to respond to the agency's request for response may also result in referral to a tier two investigation.

3.26(6) The agency may issue a request for information for the investigation after the issuance of the tier one determination.
[**ARC 8198C**, IAB 8/21/24, effective 9/25/24]

161—3.27 to **3.31** Reserved.

161—3.32(216) Secondary investigative process—tier two investigation.

3.32(1) After a tier one determination concludes further investigation is warranted, the complaint shall be referred to designated staff for further investigation of the allegations of illegal discrimination, known as a tier two investigation.

3.32(2) Staff shall review any documents submitted in response to a request for information and any other documentation submitted by the parties prior to the initiation of the tier two investigation.

3.32(3) At the discretion of the investigator, further steps may be taken, including party or witness interviews or the issuance of additional information requests or subpoenas.
[**ARC 8198C**, IAB 8/21/24, effective 9/25/24]

161—3.33(216) Conclusion of investigation. Following the conclusion of a tier two investigation, staff may issue an investigative report that may include findings of fact and legal analysis. The report will result in one or more of the following:

1. An investigative closure,
2. A probable cause or no probable cause recommendation to an administrative law judge, or

3. A no jurisdiction determination.

[**ARC 8198C**, IAB 8/21/24, effective 9/25/24]

161—3.34 and **3.35** Reserved.

161—3.36(216) Protective orders. The executive director or designee shall have the authority to issue protective orders in case files when necessary.

[**ARC 8198C**, IAB 8/21/24, effective 9/25/24]

161—3.37(216) Investigative subpoenas.

3.37(1) *Application of rule.* This rule applies to subpoenas served before a notice of contested case hearing pursuant to rule 161—4.2(17A).

3.37(2) *Prior to notice of hearing.* Subpoenas may be issued by the executive director or designee before a notice of a contested case hearing. Only the agency has the right to demand issuance of a subpoena.

3.37(3) *Timing before subpoena is issued.* Where a person fails to provide requested information pursuant to the initial information request or subsequent information requests, a subpoena may be issued. A subpoena may be issued not less than seven days after the initial information request or subsequent information requests have been delivered to the person having possession, custody, or control of the requested materials.

3.37(4) *Contents of subpoena.* Every subpoena shall state the name of the agency and the purpose for which the subpoena is issued. The subpoena shall be directed to a specific person; the person's attorney; or an officer, partner, or managing agent of any entity that is not a natural person. The subpoena for the unknown person having possession, custody, or control of the requested material or real evidence may be directed to the "custodian of records." The subpoena shall command the person to whom it is directed to produce designated books, papers, or other real evidence in the possession, custody, or control of that person at a specified time and place.

3.37(5) *Method and proof of service.* Personal service will be accomplished pursuant to Iowa Rule of Civil Procedure 1.1701(3). Proof of service is by acknowledgment of receipt by the person served or by the affidavit of the person who served the subpoena. Failure to file proof of service does not affect the validity of service.

3.37(6) *Objections to subpoena.*

a. An individual who intends not to comply with any part of a subpoena shall promptly petition the executive director to revoke or modify the subpoena. The petition shall separately identify each portion of the subpoena and provide the grounds upon which the petitioner does not intend to comply. A copy of the subpoena shall be attached to the petition. The agency shall mail the final determination of the petition by the executive director or designee to the petitioner.

b. The grounds for subpoena modification or revocation are met if the subpoena is:

(1) Not within the statutory authority of the agency;

(2) Not reasonably specific;

(3) Unduly burdensome; or

(4) Not reasonably relevant to matters under investigation.

c. A petition to revoke or modify a subpoena should be captioned "Motion to Quash" or "Petition to Modify/Revoke Subpoena" and include the agency case number.

3.37(7) *Failure to comply.* If an individual fails to comply with a subpoena, the executive director or designee may authorize the filing of a petition for enforcement in the district court.

3.37(8) *Open public records law.* The status of a record as a confidential public record under Iowa Code chapter 22 does not affect the authority of the agency to subpoena and compel the production of that record.

[**ARC 8198C**, IAB 8/21/24, effective 9/25/24]

161—3.38(216) Postinvestigation determination.

3.38(1) If a case file is sent to an administrative law judge for a probable cause or no probable cause determination, all parties will be notified of the outcome by written order. The agency will mail the order to all parties.

3.38(2) Where the administrative law judge rejects the recommendation of agency staff, the reasons shall be stated in the order.

[**ARC 8198C**, IAB 8/21/24, effective 9/25/24]

161—3.39(216) Postprobable cause process.

3.39(1) If the administrative law judge makes a probable cause determination, a staff member shall be assigned to attempt resolution of the case through conciliation. All parties shall be notified of the time and date of any conciliation.

3.39(2) The agency will work with the complainant or complainant's attorney to formulate an initial offer. The 30-day conciliation period begins when the offer of settlement is communicated to the respondent or respondent's attorney.

3.39(3) The conciliation agreement is effective only after the agreement has been signed by all parties and the executive director or designee on behalf of the agency. A copy of the agreement shall be mailed to all parties.

3.39(4) To ensure compliance with a conciliation agreement, the agency shall take appropriate action to ensure compliance, including the filing of an action in district court seeking specific performance of the terms of the conciliation agreement or other remedies that may be available.

3.39(5) A respondent may not request reconsideration of a finding of probable cause.

[**ARC 8198C**, IAB 8/21/24, effective 9/25/24]

161—3.40 to **3.42** Reserved.

161—3.43(216) Alternatives to agency process—administrative release/right-to-sue.

3.43(1) *Issuance of right-to-sue letter.* For a right-to-sue letter to be issued, the request must be submitted in writing by the complainant or the complainant's attorney and include the corresponding state and federal case numbers. After a right-to-sue letter has been issued, the case shall be administratively closed.

3.43(2) *Exceptions to issuance of right-to-sue.* A right-to-sue letter will not be issued where the agency has determined the complaint is not jurisdictional.

3.43(3) *Erroneous right-to-sue.* If the right-to-sue letter was issued erroneously, the right-to-sue letter will be deemed void and the case file reopened if the error is discovered within 90 days after issuance.

[**ARC 8198C**, IAB 8/21/24, effective 9/25/24]

161—3.44 and **3.45** Reserved.

161—3.46(216) Withdrawal process.

3.46(1) *Withdrawal of complaint.* A complainant may withdraw any part of a complaint prior to notice of a contested case hearing. After notice of a contested hearing, a complainant may only withdraw a complaint or any part of a complaint at the administrative law judge's discretion. The agency may continue investigating where deemed in the public interest.

3.46(2) *Reopening of a withdrawn complaint.* A complainant may request their withdrawn complaint be reopened within 90 days after closure, only if the agency finds that the request for withdrawal was either not filed voluntarily or was filed as a result of a mistake concerning the effect of the request for withdrawal.

3.46(3) *Withdrawal as a term of settlement.* If the withdrawal is filed pursuant to a conciliation, mediation or other settlement agreement, the complainant is barred from applying for reopening on the ground the agreement was not voluntary, unless the district court has first determined the settlement agreement is invalid.

[**ARC 8198C**, IAB 8/21/24, effective 9/25/24]

161—3.47(216) Periodic review and administrative closure.

3.47(1) *Periodic evaluation of evidence.* The executive director or designee may periodically review the complaint to determine whether further processing is warranted. When the periodic review occurs prior to the determination of probable cause, then the tier one standard in subrule 3.26(5) applies. A complaint determined to not warrant further processing shall be administratively closed.

3.47(2) *Uncooperative complainant.* A case file may be administratively closed at any time if the complainant cannot be contacted after diligent efforts or is uncooperative, causing unreasonable delay in the processing of the complaint.

3.47(3) *Involuntary satisfactory adjustment.* A case file may be closed as satisfactorily adjusted when the respondent has made an offer of settlement acceptable to the executive director or designee but not to the complainant. Notice of intended closure shall state reasons for closure and be mailed to the complainant. The complainant is allowed 30 days to provide the written reasons why the case file should remain open. The executive director or designee will review the response and notify the complainant of the decision.

3.47(4) *Frivolous complaints.* Following jurisdictional review, the executive director may determine a complaint is frivolous and does not warrant further processing. The executive director shall only make this determination in rare circumstances and shall report the number of occurrences in the annual report. If a case file is closed pursuant to this subrule, the complainant may request a right-to-sue letter pursuant to the terms of Iowa Code section 216.16 and these rules. This rule does not apply to complaints that are eligible for cross-filing with the Department of Housing and Urban Development.

3.47(5) *Litigation review.* The complaint may be administratively closed after a probable cause determination has been made when it is determined that the record does not justify proceeding to a public hearing. A complainant may not request to reopen their case file when the file was administratively closed following litigation review.

[**ARC 8198C**, IAB 8/21/24, effective 9/25/24]

161—3.48 and **3.49** Reserved.

161—3.50(216) Procedure to reopen.

3.50(1) *Request for reopening of case file within 30 days.*

a. Within 30 days following the notice of the conclusion of the investigation, a party can file an intra-agency appeal. The party shall state the reasons in writing for appeal and submit any additional documentation.

b. The agency shall notify all parties upon receipt of any intra-agency appeal. All parties shall have 14 days to provide any response to the appeal for consideration.

c. Within 30 days of intra-agency appeal, the director or designee shall review the appeal. The director or designee shall affirm, modify, or reverse the agency decision, and remand if necessary. If the case file is remanded, the director or designee shall transfer the case file to investigative staff for further processing.

3.50(2) *Reopening of an administratively closed case file after 30 days.*

a. The agency may reopen a case file at any time a right-to-sue letter could have been issued under Iowa Code section 216.16(3)*"a,"* unless otherwise provided in these rules, and where the closure was affected by any of the following:

(1) False, fraudulent, or material misrepresentation of information provided to the agency concerning a material issue in the case file by the respondent, a witness, or some other person who is not the complainant;

(2) Error by the agency staff.

b. The director or designee shall consider the information discovered under subparagraphs 3.50(2)*"a"*(1) and 3.50(2)*"a"*(2) and determine whether the complaint requires further action.

c. If it is determined that further action is necessary, the parties or their attorneys shall be notified of the reopening of the case file. If requested by the agency, the parties shall have 30 days to submit their written positions regarding the alleged new information.

3.50(3) *No probable cause determination reopening.* The agency may reopen a case file within one year of a no probable cause determination where the determination was affected by any of the following:

a. Fraud perpetrated upon the agency by some person who is not the complainant; or

b. Material misrepresentations.

3.50(4) *Reopening from breach of settlement agreement.*

a. If a party breaches a settlement agreement, the aggrieved party may seek redress with the agency or in district court.

b. If the aggrieved party seeks agency engagement, that party has 90 days from the time of an alleged breach of a settlement agreement to request the case file be reopened to continue the investigative process, but only if all the following apply:

(1) The agency is not a party to the settlement agreement;

(2) The requesting party agrees the settlement agreement is null and void; and

(3) The requesting party waives and releases any rights to seek specific performance or damages for the alleged breach in district court.

c. All parties shall be notified that a request for reopening has been made. A copy of the request for reopening shall be provided to all parties. The parties shall be afforded no less than 14 days and no more than 30 days to submit their written position and any supporting documents regarding the request.

d. The director or designee shall determine if the agreement has been breached or the nonrequesting party failed to negotiate the agreement in good faith. If it is determined that a material breach occurred, the parties or their attorneys shall be notified of the reopening of the case file and the case file will be referred for further processing.

[**ARC 8198C**, IAB 8/21/24, effective 9/25/24]

161—3.51 to **3.55** Reserved.

161—3.56(216) Access to file information.

3.56(1) Disclosure of the existence or contents of a case file is prohibited, except:

a. Upon filing an appeal in district court of a final action, parties and their attorneys may access their case file.

b. When a case has been set for a contested case hearing and notice has been mailed, parties and their attorneys may access their case file through discovery pursuant to rule 161—4.7(17A).

c. Parties and their attorneys may access the case file upon appeal of a decision rendered by an administrative law judge in a contested case. The introduction of documents into evidence from a case file during a contested case hearing does not waive the confidentiality of other documents within that case file.

3.56(2) Attorneys seeking access to case files must provide written notification of representation.

[**ARC 8198C**, IAB 8/21/24, effective 9/25/24]

161—3.57(216) Miscellaneous.

3.57(1) *Conflicts prohibited.* The administrative law judge designated to issue a determination will not serve as administrative law judge in the contested case hearing for the same case file.

3.57(2) *Injunctions.* If the executive director determines that a complainant may be irreparably injured before a contested case hearing, the executive director or designee may direct an attorney for the agency to seek appropriate injunctive relief to preserve the rights of the complainant and the public interest.

[**ARC 8198C**, IAB 8/21/24, effective 9/25/24]

These rules are intended to implement Iowa Code chapter 216.

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[Filed ARC 8198C (Notice ARC 7312C, IAB 12/27/23), IAB 8/21/24, effective 9/25/24]

1 The Administrative Rules Review Committee at its May 21, 1979, meeting delayed the effective date of 240—subrules 1.1(7) to 1.1(9), 1.3(1), 1.8(2) and rules 1.16 and 1.17 70 days.

2 Effective date of 161—3.2(4), 3.2(5), 3.3(3), 3.4(216), 3.5(216), 3.7(3), 3.8(216), 3.10(216), 3.12(216), 3.13(8) to 3.13(10), 3.14(216) and 3.16(216) delayed 70 days by the Administrative Rules Review Committee at its meeting held March 9, 1993; delayed until adjournment of the 1994 Session of the General Assembly by this Committee May 11, 1993.

CHAPTER 4
CONTESTED CASES

[Prior to 1/13/88, see Civil Rights 240—1.5(2), 1.5(3), 1.8 to 1.15, 1.18]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

161—4.1(17A) General provisions.

4.1(1) *Scope and applicability.* This chapter applies to contested case proceedings conducted by the Iowa civil rights commission.

4.1(2) *Prosecutory representative of commission.* The commission's case in support of the complaint shall be presented by the attorney or agent of the commission. An assistant attorney general may represent the Iowa civil rights commission at a contested case proceeding.

4.1(3) *Time.* Time shall be computed as provided in Iowa Code subsection 4.1(34).

4.1(4) *Modification of time limits.* For good cause shown, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

4.1(5) *Extension of time for service by mail.* Whenever a party has the right or is required by this chapter to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon that party and the notice or paper is served upon that party by mail, three days shall be added to the prescribed period. Such additional time shall not be applicable where the presiding officer has prescribed the method of service of notice and the number of days to be given. This rule has no effect on actions which must be taken within a prescribed period after the issuance of a proposed decision or final order.

161—4.2(17A) Notice of hearing and answer.

4.2(1) *Statement of charges.*

a. Where conciliation efforts fail and it is determined that the record justifies proceeding to hearing, the commission's attorney or the executive director shall prepare a written statement of charges in support of the complaint and forward it to the presiding officer together with a request for a hearing date.

b. The statement of charges shall contain:

(1) An allegation that the respondent is a proper respondent within the meaning of and subject to provisions of the Iowa civil rights Act.

(2) A factual allegation or allegations of an unfair or discriminatory practice or practices, substantially as uncovered in the investigation, stated in the complaint (including amendments thereto), stated in the order of probable cause, or stated in the investigative summary.

c. A statement of charges is sufficient if it:

(1) Names the respondents and complainants;

(2) States the section(s) of the statute alleged to be violated; and

(3) Incorporates by reference the complaint and any amendments to the complaint.

d. The statement of charges shall also specifically identify all allegations, if any, in the complaint, as amended, which:

(1) Have been closed by other than a probable cause finding, or

(2) The commission has elected not to prosecute despite a probable cause finding.

e. None of the allegations identified pursuant to paragraph 4.2(1)*"d"* shall be considered as a claim of discrimination in the contested case proceeding, but evidence on such allegations may be considered when relevant to other allegations of discrimination or as background evidence.

4.2(2) *Scheduling conference.*

a. The presiding officer may set the matter for a scheduling conference in order that the parties, including the commission, and the presiding officer may arrive at a mutually agreed date for the public hearing. If practicable, the scheduling conference should be set for no sooner than 7 and no later than 30 days after the presiding officer receives the statement of charges. The parties may be notified by regular

mail of the date of the scheduling conference. The scheduling conference may be conducted in whole or in part by telephone.

b. If no date can be agreed upon, the date of the public hearing may be set according to the presiding officer's discretion.

c. A public hearing should be scheduled for as early a date as practicable. In setting the date of hearing the availability of the presiding officer, the parties, the attorneys involved, likely witnesses, and any special circumstances shall be considered.

d. In setting the place of hearing, the location of the presiding officer, the parties, the attorneys involved, likely witnesses, and any special circumstances shall be considered.

4.2(3) *Notice of hearing.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery shall be executed by any of the following means: certified mail with return receipt requested, personal service as provided in the Iowa Rules of Civil Procedure, first-class mail, or publication as provided by the Iowa Rules of Civil Procedure to all interested parties or their attorneys at least 30 days before the date of the hearing. Certified mail return receipts, returns of service, or similar evidence of service shall be filed with the presiding officer. The notice shall include:

a. The time and place of hearing;

b. The nature of the hearing, the legal authority and jurisdiction under which the hearing is being held;

c. A short and plain statement of the matters asserted. This requirement may be satisfied by a statement of the issues as described by the statement of charges or an incorporation of the attached statement of charges;

d. The reference to the sections of the statute and rules involved;

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the commission and of parties' counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Identification of the presiding officer, if known.

4.2(4) *Answer to notice of hearing.* The respondent is encouraged to file an answer to the allegations contained within the notice of hearing within 20 days of the service of the notice of hearing. Answers are encouraged as a means of sharpening the issues and preserving claimed error.

a. If an answer is filed, it should show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations contained within the notice of hearing. The answer should also state any facts alleged to show an affirmative defense and contain as many additional defenses as the respondent may claim.

b. An answer should state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf the answer is filed, and the attorney, if any, representing that person.

c. Failure to file an answer or failure to follow the guidelines of this rule does not by itself constitute a waiver of any argument nor an admission of any issue. The optional nature of the answer, however, does not affect the respondent's obligations to raise issues in a timely fashion, to reply to discovery, or to fulfill any other obligation which is imposed upon respondent by law.

4.2(5) *Presiding officer.*

a. The presiding officer assigned to render a proposed decision shall be an administrative law judge employed by the department of inspections and appeals.

b. As used in these rules the term "presiding officer" shall mean the administrative law judge employed by the department of inspections and appeals assigned to render a proposed decision in the contested case.

c. As used in rules 161—4.13(17A) and 161—4.14(17A) the term "presiding officer" shall include the commissioners of the Iowa civil rights commission as well as the administrative law judge assigned to render a proposed decision in the contested case.

161—4.3(17A) Amendment.

4.3(1) Any notice of hearing, petition, statement of charges, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion

of the presiding officer who may impose terms or grant a continuance. Leave to amend, including leave to amend to conform to the proof, shall be freely given when justice so requires.

4.3(2) Amendment to conform to proof. When issues not raised by the notice of hearing or the answer are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after the final decision; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the hearing on the ground that it is not within the issues made by the pleadings, the presiding officer may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be served thereby and the objecting party fails to satisfy the presiding officer that the admission of such evidence would prejudice that party in maintaining the action or defense upon the merits. The presiding officer may grant a continuance to enable the objecting party to meet such evidence.

161—4.4(17A) Default.

4.4(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

4.4(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

4.4(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 161—4.23(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

4.4(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

4.4(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

4.4(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

4.4(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 161—4.25(17A).

4.4(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

4.4(9) A default decision may award any relief consistent with the notice of hearing and the commission's remedial authority under the Iowa civil rights Act.

4.4(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately.

161—4.5(17A) Consolidation and severance.

4.5(1) *Grounds for consolidation.* The presiding officer may, upon motion, consolidate any or all matters at issue in two or more contested case proceedings where:

a. The matters at issue involve common parties or common questions of fact or law;

b. Consolidation would expedite and simplify consideration of the issues involved; and

c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

4.5(2) *Effect of consolidation.* Where consolidated hearings are held, a single record of the proceedings may be made and the evidence introduced in one matter may be considered as introduced in the other, and a separate or joint decision shall be made at the discretion of the presiding officer.

4.5(3) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

161—4.6(17A) Filing and service of documents.

4.6(1) *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every other paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the commission, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

4.6(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivering, mailing, or transmitting by fax (facsimile) a copy to the attorney or to the party at the attorney's or party's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule or order.

4.6(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers shall be filed with the presiding officer at the following address: Civil Rights Administrative Law Judge (or the name of the presiding officer), Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319. Except as provided by these rules, the Iowa Rules of Civil Procedure pertaining to discovery, or other law, all pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the presiding officer.

4.6(4) *Filing—how and when made.* In a contested case before the commission a document is filed by any of the methods described in 481—subrule 10.12(3). The date a document is deemed to be filed in a contested case before the commission is determined according to 481—subrule 10.12(3).

4.6(5) *Proof of mailing.*

a. In a contested case before the commission proof of mailing is made according to 481—subrule 10.12(4).

b. Conflict among proofs of mailing . The date of mailing is the date shown by the legible United States Postal Service postmark and, only in the absence of a legible postmark, the date of mailing is the date shown by the affidavit, certificate, or certification of mailing.

161—4.7(17A) Discovery.

4.7(1) *Civil procedure rules govern discovery.* Discovery procedures applicable in civil actions, as set forth in the Iowa Rules of Civil Procedure, are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

4.7(2) *Motions relating to discovery.* Any motion relating to discovery shall allege that the moving party has made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 4.7(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

4.7(3) *Use at hearing.* Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

4.7(4) *Sanctions available.* The Iowa Rules of Civil Procedure govern what sanctions may be imposed by the presiding officer for the failure to comply with a discovery order, the failure to respond to discovery, or failing to otherwise comply with the rules of discovery.

4.7(5) *Discovery on commission and complainant.* When discovery of information from the complainant is sought, discovery should be made upon the complainant with a copy thereof provided to the commission's representative. When discovery of information from the commission is sought, discovery should be made upon the commission with a copy thereof provided to the complainant or the complainant's

representative. Discovery of the commission's investigative file may be made pursuant to Iowa Code section 17A.13(2).

4.7(6) *Discovery materials not filed.* Unless otherwise ordered by the presiding officer, no deposition, notice of deposition, interrogatory, request for production of documents, request for admission, or response, document or thing produced, or objection thereto shall be filed. Any motion attacking the sufficiency of a response to a discovery request must have a copy of the request and response attached or the motion may be denied. This rule does not apply to depositions to perpetuate testimony.

4.7(7) *Discovery conference.* A discovery conference may be ordered, requested, and held in the same manner and upon the same terms as are provided for in Iowa Rule of Civil Procedure 124.2.

4.7(8) *Duplication of civil procedure rules.* The duplication in these rules of provisions contained within the Iowa Rules of Civil Procedure relating to discovery does not imply that other portions of the civil procedure rules do not govern discovery in contested cases before the commission.

161—4.8(17A) Subpoenas.

4.8(1) *Issuance of subpoenas.*

a. A commission subpoena shall be issued to a party upon request. Such a request should be in writing, but oral requests may be honored by the presiding officer. The request shall include the name, address, and telephone number of the requesting party. The presiding officer may issue a subpoena, or a subpoena for the production of documentary evidence, signed but otherwise in blank to a party requesting it, who shall fill it in before service.

b. Parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

4.8(2) *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

161—4.9(17A) Motions.

4.9(1) *Form.* No technical form for motions is required. However prehearing motions must be in writing, state the grounds for relief, and state the relief sought. Any motion for summary judgment shall comply with the Iowa Rules of Civil Procedure. Motions made during the hearing may be stated orally upon the record.

4.9(2) *Response.* Any party may file a written response to a motion within 14 days after the motion is served, unless the time period is extended or shortened by the rules of the commission or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

4.9(3) *Oral argument.*

a. The presiding officer may schedule oral argument on any motion.

b. Oral arguments on motions shall be held in Des Moines or by telephone conference call, unless the presiding officer orders otherwise.

c. A record of arguments will be made at the discretion of the presiding officer. A record may be made by tape recording or by certified shorthand reporter.

d. The expense of transcribing a record of the oral argument or any part thereof shall be charged to the requesting party.

4.9(4) *Motions regarding hearing.*

a. Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

b. Motions regarding sequestration of witnesses need not be made ten days prior to the hearing.

4.9(5) *Motions for summary judgment.* Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 237 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 4.30(17A) and appeal pursuant to rule 4.23(17A).

161—4.10(17A) Prehearing conferences.

4.10(1) Subject matter of conference. Upon the presiding officer's own motion or the motion of the parties, the presiding officer may direct the parties or their counsel to meet with the presiding officer for a conference to consider:

a. Simplification of the issues;

b. Necessity or desirability of amendments to pleadings for purposes of clarification, simplification, or limitation;

c. Stipulations, admissions of fact and of contents and authenticity of documents;

d. Limitation of number of witnesses;

e. Scheduling dates for the exchange of witness lists and proposed exhibits;

f. Identifying matters which the parties intend to request be officially noticed;

g. Such other matters, including discovery matters, as may tend to expedite the disposition of the proceedings.

4.10(2) Prehearing conferences shall be conducted by telephone unless otherwise ordered. A record of the conference will be kept unless otherwise ordered by the presiding officer. A record of the conference may be by tape recording or by certified shorthand reporter. A party may request a copy of the tape recording or transcript of the conference, if it was recorded; or a transcript of the conference, if it was reported, and the requesting party will bear the cost of the recording or transcription.

4.10(3) Effect of conference. The record shall show the matters disposed of by order and by agreement in such pretrial conferences. The subsequent course of the proceeding shall be controlled by such action.

161—4.11(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

4.11(1) Written or oral motions for continuance. A written motion for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral motion for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making an oral motion for a continuance must confirm that request by written motion within five days after the oral request unless that requirement is waived by the presiding officer. No motion for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible.

4.11(2) Factors to consider. In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirement;

g. The existence of a conflict in the schedules of counsel, parties, and witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

4.11(3) The presiding officer may require documentation of any grounds for continuance.

4.11(4) Failure of a party to timely obtain counsel, after clear and adequate notice of the right to be represented by an attorney, will not be considered grounds for a continuance in order to allow time to obtain counsel.

161—4.12(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties or by order of the presiding officer. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

161—4.13(17A) Disqualification.

4.13(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

4.13(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by 1998 Iowa Acts, chapter 1202, section 19(3), and subrules 4.13(3) and 4.14(8).

4.13(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

4.13(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 4.13(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 161—4.25(17A).

4.13(5) Remittal of disqualification. A presiding officer disqualified by the terms of 4.13(1)*"e"* or *"f"* may, instead of withdrawing from the proceeding, disclose, either in writing or orally, on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the administrative adjudicator's participation, all agree in writing that the adjudicator's relationship is immaterial or that the adjudicator's financial interest is insubstantial, the adjudicator is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

4.13(6) Partial disqualification of commission. The disqualification of one or more members of the commission who are considering adoption of a proposed decision of the presiding officer shall not prevent the remaining commissioners from considering the proposed decision.

161—4.14(17A) Ex parte communication.

4.14(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned to render a proposed or final decision or to make findings of fact or conclusions of law in the contested case from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 4.13(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

4.14(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

4.14(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

4.14(4) To avoid prohibited ex parte communications notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 161—4.6(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

4.14(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

4.14(6) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 161—4.11(17A).

4.14(7) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

4.14(8) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

4.14(9) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by agency personnel shall be reported to the executive director for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

161—4.15(17A) Powers of presiding officer. The presiding officer who presides at the hearing shall have all powers necessary to the conduct of a fair and impartial hearing including, but not limited to, the power to:

1. Conduct formal hearings in accordance with the provisions of this chapter;
2. Administer oaths and examine witnesses;
3. Compel the production of documents and appearance of witnesses in control of the parties;
4. Issue subpoenas;
5. Issue decisions and orders;
6. Rule on motions, and other procedural items or matters pending before the presiding officer;
7. Require the submission of briefs;
8. Issue such orders and rulings as will ensure the orderly conduct of the proceedings;
9. Receive, rule on, exclude or limit evidence and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious;
10. Maintain the decorum of the hearing including the power to refuse to admit or to expel anyone whose conduct is disorderly;
11. Take any action authorized by these rules;
12. Impose appropriate sanctions against any party or person failing to obey an order under these rules which may include:

- Refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing designated matters in evidence;
- Excluding all testimony of an unresponsive or evasive witness, or determining that the answer of such witness, if given, would be unfavorable to the party, if any, having control over the witness; and
- Expelling any party or person from further participation in the hearing.

161—4.16(17A) Hearing procedures.

4.16(1) Objections. All objections shall be timely made and stated in the record. Any objection not duly made before the presiding officer shall be deemed waived.

4.16(2) Representation of parties. Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

4.16(3) Rights of parties. Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

4.16(4) Sequestration of witnesses. At the request of a party, a presiding officer may order witnesses sequestered so they cannot hear the testimony of other witnesses, and the judge may make the order sua sponte. This rule does not authorize sequestration of (a) a party who is a natural person, or (b) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (c) a person whose presence is shown by a party to be essential to the presentation of the cause.

4.16(5) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceeding;

b. The parties shall be given an opportunity to present an opening statement;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

4.16(6) Marking of exhibits. Exhibits entered into evidence which are offered by the commission or the complainant shall be numbered serially, i.e., 1, 2, 3, etc.; whereas those offered by the respondent shall be lettered serially, i.e., A, B, C, ...AA, BB, etc.; and those offered jointly shall be designated by "joint exhibit" and numbered serially.

4.16(7) Contents of record. The record in a contested case before the presiding officer shall include:

a. All pleadings, motions, and rulings;

b. All evidence received or considered and all other submissions;

c. A statement of matters officially noticed;

d. All questions and offers of proof, objections, and rulings thereon;

e. All proposed findings and exceptions;

f. Any decision, opinion or report by the officer presiding at the hearing.

The term "all other submissions" as used in this rule includes, but is not limited to, all written arguments filed with the presiding officer or the commission plus any attachments to such arguments.

Deliberations of the commission when deciding whether to adopt a proposed decision are not part of the record unless expressly made part of the record by order of the commission or the presiding officer.

4.16(8) Standards of conduct.

a. All persons appearing in proceedings before the presiding officer are expected to act with integrity, and in an ethical manner.

b. The presiding officer may exclude from proceedings parties, witnesses, and 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 violation of the prohibition against ex parte communications. The presiding officer shall state in the record the cause for barring an attorney or other individual from participation in a particular proceeding. The presiding officer may suspend the proceeding for a reasonable time for the purpose of enabling a party to obtain another attorney or representative. In accordance with Rule 1.2 of the Committee on Professional Ethics and Conduct of the Iowa State Bar Association, the presiding officer may also file a complaint with the committee if the judge believes that there has been a violation by an attorney of the Iowa Code of Professional Responsibility for Lawyers.

c. An order barring an individual from participation in a proceeding should be made only in exceptional circumstances.

161—4.17(17A) Evidence.

4.17(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

4.17(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts. Stipulated facts are binding on the presiding officer and the commission when it has not been proven that the stipulation was the result of fraud, wrongdoing, misrepresentation, or was not in accord with the intent of the parties.

4.17(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice by express or implied waiver, or the presiding officer determines that good cause justifies their expansion. If the presiding officer decides to admit evidence on issues outside the scope of notice over the objection of a party who did not have actual notice of those issues, that party, upon timely motion, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue. The scope of the issues at public hearing may include the

facts as uncovered in the investigation and need not be limited to the allegations as stated in the original complaint.

4.17(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

4.17(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve ruling until the written decision. Evidentiary objections, other than those based on relevancy, materiality, unduly repetitious evidence, privilege, discovery rules, or scope of examination, or any ground for which a ruling is compulsory as a matter of law, shall be simply noted in the record by the presiding officer.

4.17(6) Whenever evidence is ruled inadmissible, the party offering that exhibit may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document of exhibit, it shall be marked as part of an offer of proof and inserted in the record.

4.17(7) Although the rules of evidence do not apply in a contested case hearing, a finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The commission shall give effect to the rules of privilege recognized by law.

4.17(8) The authenticity of all documents submitted as proposed exhibits at the prehearing conference shall be deemed admitted unless objection is made at the prehearing conference or a written objection to authenticity of a document is filed at least ten days prior to the hearing. A party will be permitted to challenge authenticity at a later time upon a clear showing of good cause for failure to have made the objection earlier. A party's objection to authenticity is that party's refusal to admit the fact of authenticity and need not be ruled upon to be effective. If authenticity is not admitted under this rule it may be proved at hearing by any means permitted by law.

4.17(9) No evidence shall be received at any hearing concerning offers or counter-offers of adjustment during efforts to conciliate or settle an alleged unfair or discriminatory practice.

161—4.18(17A) Evidence of past sexual practices.

4.18(1) Discovery regarding past sexual practices. In a contested case alleging conduct which constitutes sexual harassment, a party seeking discovery of information concerning the complainant's sexual conduct with persons other than the person who committed the alleged act of sexual harassment, must establish specific facts showing good cause for that discovery, and that the information sought is relevant to the subject matter of the action, and reasonably calculated to lead to the discovery of admissible evidence.

4.18(2) Evidence of past sexual practices inadmissible. In a contested case against a respondent who is accused of sexual harassment, or whose agent or employee is accused of sexual harassment, evidence concerning the past sexual behavior of the alleged victim is not admissible.

161—4.19(17A) Cost of copies of record. Upon request the commission shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record shall be paid by the requesting party.

161—4.20(17A) Posthearing briefs.

4.20(1) In general. The presiding officer may fix times for submission of posthearing briefs. Unless otherwise ordered by the presiding officer, such briefs shall be filed simultaneously by all parties and there shall be no page limit nor any other formal requirements.

4.20(2) Reply briefs. If simultaneous briefs are filed then any party may file a reply brief within 10 days after service of the brief to which the reply is made.

4.20(3) Supplemental briefs. Posthearing briefs in addition to those ordered by the presiding officer under subrule 4.20(1) or those allowed by subrule 4.20(2) may be filed only upon application to the presiding officer.

4.20(4) Extensions. A motion for an extension of the time to file a brief shall be made no later than the day before the brief is due. A motion for an extension to file a brief may be oral and may be granted ex parte where the movant represents either (*a*) that the other parties who are filing briefs have been notified and that the motion is unopposed or (*b*) that there is an emergency which justifies such a request. An order granting an extension shall be in writing.

4.20(5) Late filing. Upon motion and within the discretion of the presiding officer a brief which is filed late may be struck.

4.20(6) Failure in a party's briefs to state, to argue, or to cite authority in support of an issue may be deemed waiver of that issue by that party before the presiding officer.

161—4.21(17A) Requests to present additional evidence.

4.21(1) *In general.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence.

4.21(2) *After proposed decision issued.* If a request to present additional evidence is made after the issuance of the proposed decision by the presiding officer then the request must be filed with the appeal or, by a nonappealing party, within 14 days after the service of the appeal. If the commission grants the motion to present additional evidence, the commission shall remand the case to the presiding officer for the taking of the additional evidence and any appropriate modification of the proposed order.

161—4.22(17A) Proposed decision.

4.22(1) *Written decision.* After a review of the transcript, the evidence, and the briefs, the presiding officer shall set forth, in writing, findings of fact, conclusions of law, and a proposed decision and order. The proposed decision becomes the final decision of the commission without further proceedings unless there is an appeal to, or review on motion of, the Iowa civil rights commission within the time provided in rule 161—4.23(17A).

4.22(2) *Notification.* Upon receipt of the presiding officer's proposed decision, the commission shall forward a copy of the proposed decision to each of the parties by certified mail. A copy shall also be sent to counsel and to each commissioner.

161—4.23(17A) Review of proposed decision on appeal to the commission.

4.23(1) Appeal by party. Any adversely affected party may appeal a proposed decision to the commission within 30 days after issuance of the proposed decision.

4.23(2) Review. The commission may initiate review of a proposed decision on its own motion at any time within 60 days following the issuance of such a decision.

4.23(3) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the Iowa civil rights commission. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

a. The parties initiating the appeal;

b. The proposed decision or order appealed from;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The relief sought;

e. The grounds for relief.

4.23(4) If an appeal or motion for review is filed, the executive director shall set a review date. The parties shall be notified of this date by certified mail. Copies of this notification shall also be sent to counsel and the commissioners.

4.23(5) An appeal is filed with the commission by delivering the notice of appeal to the commission at its offices in Des Moines. All appeals and briefs shall be sent to the executive director of the Iowa civil rights commission in care of the commission at its Des Moines address. An appeal may be filed by any of the methods described in 161—subrules 3.5(1) to 3.5(4). Regardless of the method used to file an appeal, the date an appeal is filed is the date it is actually received by the commission in Des Moines.

4.23(6) Oral argument. All parties or their attorneys shall be allowed ten minutes to present oral argument to the commission whenever the commission reviews a proposed decision pursuant to this rule. The commission may, in its discretion, allow oral argument to continue longer.

4.23(7) Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. The commission may shorten or extend the briefing period as appropriate. When filing a brief the party shall file an original and nine copies.

161—4.24(17A) Scope of review by commission.

4.24(1) *In general.* Whenever the commission reviews a proposed decision, it has all the power it would have in initially making the final decision. The commission may adopt, modify or reject the presiding officer's proposed decision or it may remand the case to the presiding officer for the taking of additional evidence and the making of any further proposed findings of fact, conclusions of law, or decision and order the commission deems necessary.

4.24(2) *Limitation of issues.* Whenever the commission reviews a proposed decision it shall consider only those issues actually presented to the presiding officer unless the issue was one which either:

a. Was raised prior to the proposed decision by a party, but not ruled upon, or

b. Was discussed in the proposed decision, but not argued on brief by the parties.

This rule does not affect a party's right to seek disqualification of a commissioner under rule 161—4.13(17A) or 161—4.14(17A).

161—4.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the commission may review an interlocutory order of the presiding officer. In determining whether to do so, the commission shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request or motion for interlocutory review must be filed within seven days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

161—4.26(17A) Intervention.

4.26(1) *Motion.* A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

4.26(2) *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

4.26(3) *Grounds for intervention.* The movant shall demonstrate that: (*a*) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (*b*) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (*c*) the interests of the movant are not adequately represented by existing parties.

4.26(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

161—4.27(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

161—4.28(17A) Awards of attorney's fees.

4.28(1) *Retention of jurisdiction.* In any final decision in which it is determined that the complainant is entitled to an award of attorney's fees, but the actual amount has not yet been determined, there is, by operation of this rule, an express retention of jurisdiction of the case by the commission in order to determine the actual amount of attorney's fees to which the party is entitled and to enter a subsequent order awarding those fees. The commission shall take this action regardless of whether or not such retention of jurisdiction is expressed in the final decision. In such case, the decision is final in all other respects except the determination of the amount of the attorney's fees.

4.28(2) *Stipulation.* A final decision, in which it is determined that the complainant is entitled to an award of attorney's fees, may provide for an opportunity for the parties to file a written stipulation concerning the amount of the fees to be awarded. Any such stipulation entered into by the complainant(s) and respondent(s) is binding on the commission in the absence of evidence of fraud, wrongdoing, misrepresentation, or evidence that the stipulation is not in accord with the intent of the parties.

4.28(3) *Hearing.* If the amount of attorney's fees is not stipulated to by the parties, the presiding officer shall schedule a hearing on the issue of the amount of the attorney's fees. The hearing shall be governed by the same procedures as a hearing on the merits of a complaint except where otherwise ordered by the presiding officer. The parties may elect, by written stipulation, to utilize some method, such as stipulation of facts or submission of a documentary record, other than or complementary to a hearing, in order to make a record on attorney's fees which may then be reviewed by the presiding officer. By operation of this rule, the commission expresses its consent to such stipulations if agreed to by the parties seeking and contesting attorney's fees. The record of the original hearing is part of the record on the attorney's fee issue. Regardless of the method by which the record is made, the complainant has the burden of persuasion in proving attorney's fees.

[**ARC 8737B**, IAB 5/5/10, effective 6/9/10]

161—4.29(17A) Waiver, modification of rules.

4.29(1) *By presiding officer.* Upon notice to all parties, the presiding officer may, with respect to matters pending before the presiding officer, modify or waive any rule herein upon a determination that no party will be prejudiced and that the ends of justice will be served.

4.29(2) *By parties.* Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the presiding officer, in the discretion of the presiding officer, may refuse to give effect to such a waiver when the presiding officer deems the waiver to be inconsistent with the public interest.

161—4.30(17A) Application for rehearing.

4.30(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

4.30(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in rule 161—4.21(17A), the applicant requests an opportunity to submit additional evidence.

4.30(3) *Time of filing.* The application shall be filed with the commission at its offices in Des Moines within 20 days after the issuance of the final decision.

4.30(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the commission shall serve copies on all parties.

4.30(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

161—4.31(17A) Hearing—other reasons. At any other time, the commission, executive director, or designee may, at its discretion, convene a hearing: whenever a problem of discrimination arises; in order to expedite the disposition of preliminary matters in any action before it; or when in the judgment of the commission, executive director, or designee, the circumstances warrant.

[**ARC 8737B**, IAB 5/5/10, effective 6/9/10]

161—4.32(216) Assessment of costs of hearing.

4.32(1) *General rule.* If the complainant or the commission prevails in the hearing, the respondent shall pay the "contested case costs" incurred by the commission. If the respondent prevails in the hearing, the commission shall itself bear the "contested case costs" incurred by the commission.

4.32(2) *Mixed results.* Where the complainant or commission is successful as to part of the remedies sought at the hearing and unsuccessful as to part of the remedies, the administrative law judge may recommend an equitable apportionment of "contested case costs" between the commission and the respondent.

4.32(3) *Costs allowable.* The following "contested case costs" and no others will be assessed or apportioned as provided in subrule 4.32(1) or 4.32(2):

a. The daily charge of the court reporter for attending and transcribing the hearing.

b. All mileage charges of the court reporter for traveling to and from the hearing.

c. All travel time charges of the court reporter for traveling to and from the hearing.

d. The cost of the original of the transcripts of the hearing.

e. Postage incurred by the administrative law judge in sending by mail (regular or certified) any papers which are made part of the record.

4.32(4) *Remedial orders.* This rule does not affect those costs which may be recoverable under Iowa Code section 216.15(8)*"a"*(8).

161—4.33(216) Appeals to the district court. Appeals to the district courts from the decision of the commission shall be perfected pursuant to the provisions of Iowa Code section 216.17 and Iowa Code chapter 17A.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapter 216.

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[1] The Administrative Rules Review Committee at its May 21, 1979, meeting delayed the effective date of 240—subrules 1.1(7) to 1.1(9), 1.3(1), 1.8(2) and rules 1.16 and 1.17 70 days.

CHAPTER 5
DISCRIMINATION IN AIDING/ABETTING AND RETALIATION

Reserved

CHAPTER 6
DISCRIMINATION IN CREDIT

[Prior to 1/13/88, see Civil Rights 240—Ch 4]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

161—6.1(216) Definitions.

"Credit" means an amount or limit to the extent a person may receive goods, services or money for payment in the future, and includes but is not limited to, loans for any purpose and in any amount, checking accounts, charge accounts, mortgages and other home financing, credit cards and credit ratings.

"Credit card" means a small card (as one issued by hotels, restaurants, stores, petroleum companies or banks) authorizing the person or company named or its agent to charge goods or services or borrow money.

"Credit institution" means banks, savings and loan associations, finance companies, credit departments of all retail businesses, credit rating services, credit card issuers, credit bureaus, credit unions and all other loan, credit, financing and mortgaging institutions.

161—6.2(216) Practices prohibited.

6.2(1) The criteria used to evaluate applicants for credit and the standards necessary to be met by the successful applicants shall be the same regardless of the age, color, creed, national origin, race, religion, marital status, sexual orientation, gender identity, sex or physical disability of the applicant.

6.2(2) No credit institution shall require any information, reference or countersignature of any applicant for credit which would not be required of all applicants, regardless of their age, color, creed, national origin, race, religion, marital status, sex or physical disability.

6.2(3) It shall be an unlawful practice for any credit institution to discount or disregard the earnings or income of a spouse in computing family income.

6.2(4) It shall be an unlawful practice for any credit institution to refuse to loan money or extend credit to a woman solely because she is in the childbearing years or solely because she is divorced, or solely because she is unmarried.

6.2(5) It shall be an unlawful practice for any credit institution to extinguish the established credit of any woman upon her marriage or to require that a new account be opened in the husband's name.

6.2(6) It shall be an unlawful practice for any credit institution to refuse to retain any records of credit transactions in the name of a married woman when she so requests in writing.

[**ARC 8744B**, IAB 5/5/10, effective 6/9/10]

161—6.3(216) Credit inquiries.

6.3(1) A credit application or credit interviewer may inquire as to age, disability, sex or marital status provided the inquiry is made in good faith for a nondiscriminatory purpose. Any inquiry which expresses directly or indirectly any limitation, specification, or discrimination as to age, disability, sex or marital status shall be unlawful.

6.3(2) The information required to be given by the applicant for credit should be limited to what is necessary for determining the applicant's financial conditions and prospects for repayment regardless of the applicant's age, color, creed, national origin, race, religion, marital status, sex or physical disability. The consent of a spouse shall not be required where the applicant is otherwise eligible for credit.

161—6.4(216) Exceptions.

6.4(1) Cosignatures may be required of a married couple intending to establish a joint account with the company or business issuing the credit card.

6.4(2) The exception for cosignatures is limited, and the issuer should presume the applicant is seeking a credit card in the applicant's own name regardless of the marital status of the applicant.

6.4(3) These rules shall not prohibit any party to a credit transaction from considering the application to the particular case of Iowa law on dower, title, descent, and distribution, or from taking constructive action thereon.

These rules are intended to implement Iowa Code chapter 216.

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CHAPTER 7
DISCRIMINATION IN EDUCATION

Reserved

CHAPTER 8
DISCRIMINATION IN EMPLOYMENT

[Prior to 1/13/88, see Civil Rights 240—Chs 2, 3, 5, 6]

Chapter rescission date pursuant to Iowa Code section 17A.7: 9/25/29

161—8.1(216) Definitions.

"Has a record of such an impairment" means having a history of, or being misclassified as having, a mental or physical impairment that substantially limits a major life activity.

"Major life activities" includes but is not limited to caring for oneself, manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

"Physical or mental impairment" includes:

1. Physiological disorders or conditions, cosmetic disfigurements, or anatomical loss affecting any of the following systems: neurological; musculoskeletal; special sense organs; respiratory and speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic or lymphatic; skin; and endocrine; or

2. Mental or psychological disorders such as intellectual disabilities, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

"Regarded as having an impairment" means:

1. The perception of having an impairment that substantially limits major life activities; or

2. Having an impairment that substantially limits major life activities because of others' attitudes toward the impairment.

"Substantially disabled" means having a physical or mental impairment that substantially limits a major life activity, having a record of such impairment, or being regarded as having an impairment.

[**ARC 8199C**, IAB 8/21/24, effective 9/25/24]

161—8.2(216) Bona fide occupational qualifications.

8.2(1) An employer, employment agency, or labor organization may take action otherwise prohibited under commission rules where the protected basis is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business.

8.2(2) Bona fide occupational qualifications are narrow in scope and do not include convenience or an employer's preferences.

8.2(3) An employer or employment agency's following of federal or state statutes or regulations establishing employment standards is not illegal discrimination when the standards are bona fide occupational qualifications.

8.2(4) A bona fide occupational qualification will also be recognized where there exist special, individual occupational circumstances such as acting or modeling.

8.2(5) Bona fide occupational qualifications do not include assumptions about a protected basis, comparative characteristics of a protected basis, and stereotypes based on a protected basis.

8.2(6) No publication shall advertise employment opportunities containing any indication of a preference, limitation, or restriction based upon age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability, unless there is a bona fide occupational qualification.

[**ARC 8199C**, IAB 8/21/24, effective 9/25/24]

161—8.3(216) Preemployment inquiries.

8.3(1) Preemployment inquiries into an applicant's membership in a protected class are not prohibited so far as necessary to determine an applicant's bona fide occupational qualification for the position. The burden to show the existence of a bona fide occupational qualification shall be on the employer, employment agency, or labor organization.

8.3(2) This rule does not prohibit inquiry:

a. As to whether a job applicant is over 18 years of age, or

b. For postemployment inquiries regarding age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability for legitimate recordkeeping purposes.

8.3(3) An employment interviewer shall not ask about a disability unless the inquiry is made in good faith for a nondiscriminatory purpose.
[**ARC 8199C**, IAB 8/21/24, effective 9/25/24]

161—8.4 to **8.10** Reserved.

161—8.11(216) Reasonable accommodations—assessment and placement.

8.11(1) Employers shall accommodate the known physical or mental limitations of qualified disabled applicants or employees, unless doing so would result in an undue hardship. Employers cannot deny employment opportunities to qualified disabled employees or applicants due to their need for reasonable accommodation.

8.11(2) Reasonable accommodation may include:

a. Making facilities readily accessible to individuals with disabilities; and

b. Job restructuring, modified work schedules, acquisition or modification of equipment or devices, readers or interpreters, or similar actions.

8.11(3) In determining whether an accommodation would impose an undue hardship on an employer, factors to be considered may include:

a. The size of the employer, including the number of employees, number and type of facilities, and budget;

b. The nature of the employer's operation, including the composition and structure of its workforce; and

c. The nature and cost of the accommodation.
[**ARC 8199C**, IAB 8/21/24, effective 9/25/24]

161—8.12(216) Physical examinations.

8.12(1) If examinations or assessments are required, they should be designed to determine whether an applicant:

a. Has the ability to perform the duties of the position.

b. Is qualified to do the work without adverse consequences such as creating a danger to the life or health of others.

c. Is professionally competent or has the necessary skills or ability to become professionally competent to perform the duties of the job.

8.12(2) Physical standards for employment must be reasonable and based on complete, factual information about job duties, working conditions, hazards, and essential physical requirements.
[**ARC 8199C**, IAB 8/21/24, effective 9/25/24]

161—8.13(216) Disability arising during employment. When an individual becomes disabled during employment, the employer shall provide reasonable accommodations pursuant to rule 161—8.11(216).
[**ARC 8199C**, IAB 8/21/24, effective 9/25/24]

161—8.14 to **8.24** Reserved.

161—8.25(216) Retirement plans and benefit systems.

8.25(1) An employer shall not be required to:

a. Hire back an employee following retirement; or

b. Hire an applicant for employment whose age is the retirement age under the employer's retirement plan or benefit system provided that the plan or system is not a mere subterfuge for the purpose of evading the provisions of the Iowa civil rights Act of 1965.

8.25(2) Retirement plans shall not require involuntary retirement of a person under the age of 70 because of the person's age, except where otherwise provided in state law.

8.25(3) Mandatory retirement based on age will not be applied to members of the Iowa public employees' retirement system.

8.25(4) Employer contributions to insurance, pension, and other programs are not a violation of the Act if those contributions are the same for each employee or if the resulting benefits are equal.

[**ARC 8199C**, IAB 8/21/24, effective 9/25/24]

These rules are intended to implement Iowa Code chapter 216.

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1 Effective date of 240—6.2(6) delayed 70 days by the Administrative Rules Review Committee.

2 Effective date of 8.27(6)*"a"*(2) and 8.27(6)*"b"* delayed 70 days by the Administrative Rules Review Committee at their February 11, 1988, meeting.

CHAPTER 9
DISCRIMINATION IN HOUSING

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

161—9.1(216) Construction of chapter.

9.1(1) *Limitation of chapter.* All the rules contained herein apply only to:

a. Complaints which allege a violation of the prohibitions contained in Iowa Code section 216.8 or 216.8A;

b. Complaints which allege a violation of Iowa Code section 216.11 or 216.11A arising out of alleged violations of the prohibitions contained in Iowa Code section 216.8 or 216.8A; and the interpretation of the provisions of the Iowa Code which relate to such complaints or to unfair or discriminatory practices in the area of housing.

9.1(2) *Conflicting rules.* Where a provision of this chapter applies under the terms of subrule 9.1(1) and that provision conflicts with a rule of the commission not contained within Chapter 9, then the provision contained within Chapter 9 shall prevail.

161—9.2(216) Definitions. As used in this chapter, the following definitions shall apply:

"Party" means any complainants and respondents involved in the complaint of discrimination under investigation.

"Presiding officer for discovery" means an administrative law judge employed by the department of inspections and appeals and assigned to render decisions regarding discovery disputes arising in the course of civil rights commission investigations.

161—9.3(216) Interpretation of various housing provisions.

"Aggrieved person." As used in the Iowa civil rights Act provisions relating to discrimination in housing, the term "aggrieved person" includes any person who claims to have been injured by a discriminatory housing practice, or any person who believes that that person will be injured by a discriminatory housing practice that is about to occur.

"Discriminatory housing or real estate practice." A person who violates the prohibitions contained in Iowa Code section 216.8 or 216.8A commits an "unfair or discriminatory practice" in the area of housing or real estate. A person who commits a violation of Iowa Code section 216.11 or 216.11A arising out of alleged violations of the prohibitions contained in Iowa Code section 216.8 or 216.8A commits an "unfair or discriminatory practice" in the area of housing or real estate.

"Dwelling." As used in Iowa Code chapter 216, the term "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.

"Exceptions." The exceptions found in Iowa Code sections 216.12(2), 216.12(3), and 216.12(5) do not apply to Iowa Code section 216.8(3) relating to advertising.

"Handicap." As used in Iowa Code section 216.2(5), the term "handicap" with respect to a person means:

1. A physical or mental impairment which substantially limits one or more of such person's major life activities,
2. A record of having such an impairment, or
3. Being regarded as having such an impairment.

Such term does not include current, illegal use of or addiction to a controlled substance (as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802).

"Housing accommodation." As used in Iowa Code chapter 216, the term "housing accommodation" has the same meaning as is given the term "dwelling" in this rule.

"Housing for older persons." The exception found in Iowa Code section 216.12(4) is limited to discrimination based upon "familial status."

Iowa Code section 216.15A(10)"c." The word "continued" as used in this paragraph means "carried on or kept up without cessation." This paragraph does not refer to the adjournment or postponement of a hearing to a subsequent date or time.

Iowa Code section 216.16A(1)"a." Election to proceed in court. The election to have the charges of a complaint decided in a civil action as provided in Iowa Code section 216.16A(1)*"a"* is only available where:

1. It is alleged that there has been a violation of some portion of Iowa Code section 216.8 or 216.8A, or
2. It is alleged that there has been a violation of Iowa Code section 216.11 or 216.11A arising out of alleged violations of the prohibitions contained in Iowa Code section 216.8 or 216.8A.

Iowa Code section 216.16A(2). The phrase "mediation agreement" in Iowa Code section 216.16A(2) refers to the agreement described in Iowa Code section 216.15A(2)*"a"* to *"e."*

"Person." As used in the Iowa civil rights Act provisions relating to discrimination in housing, the term "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. The specific inclusion of an individual or entity within this definition of "person" does not imply that that individual or entity is excluded from the definition of "person" in Iowa Code section 216.2(11).

Referral and deferral to local agencies in housing cases. If a complaint alleges either a violation of the prohibitions contained in Iowa Code section 216.8 or 216.8A or a violation of Iowa Code section 216.11 or 216.11A arising out of alleged violations of the prohibitions contained in Iowa Code section 216.8 or 216.8A, then deferral and referral of that complaint to a local commission are governed by the provisions of Iowa Code section 216.5(14) and that section takes precedence over Iowa Code section 216.19.

161—9.4(216) Interpretation of provisions affecting court actions regarding alleged discriminatory housing or real estate practices occurring after July 1, 1991.

9.4(1) *Time limitation of rule.* This rule applies only to alleged discriminatory housing or real estate practices occurring after July 1, 1991.

9.4(2) *Aggrieved person's direct action in district court.*

a. Filing of complaint not necessary. A complaint which alleges either (1) a violation of the prohibitions contained in Iowa Code section 216.8 or 216.8A, or (2) a violation of Iowa Code section 216.11 or 216.11A arising out of alleged violations of the prohibitions contained in Iowa Code section 216.8 or 216.8A need not be filed with the commission in order for an aggrieved person to seek judicial remedies for that alleged violation. An aggrieved person may file an action alleging such violations directly in district court pursuant to Iowa Code section 216.16A(2).

b. Effect of commission processing.

(1) In general. The status of commission processing of a complaint alleging a discriminatory housing or real estate practice does not affect the rights of an aggrieved party to file a civil action under Iowa Code section 216.16A(2) based on that same or any other alleged discriminatory housing or real estate practice.

(2) Exceptions. Commission processing will bar an aggrieved person from filing a civil action under Iowa Code section 216.16A(2) based on an alleged discriminatory housing or real estate practice only where either:

1. The commission has obtained a mediation agreement with the consent of that aggrieved person regarding that alleged discriminatory housing or real estate practice, or
2. The commission has begun a contested case hearing on the record regarding that same alleged discriminatory housing or real estate practice.

c. Notification of commission. If a person has filed a complaint alleging a discriminatory housing or real estate practice with the commission and that person subsequently commences a civil action under Iowa Code section 216.16A(2) based on that same alleged discriminatory housing or real estate practice, the aggrieved person is encouraged to immediately notify the Iowa civil rights commission of the filing of the civil action.

d. Remedies. In an action filed directly in district court pursuant to Iowa Code section 216.16A(2), the court may, upon a finding of discrimination, order any of the remedies provided for in Iowa Code section 216.17A(6).

9.4(3) *Election to proceed in district court.*

a. In general. An aggrieved person on whose behalf a complaint was filed, a complainant, or a respondent may, pursuant to Iowa Code section 216.16A(1), elect to have the allegations asserted in the complaint decided in a civil action in district court. An election is made by filing a written notice of election with the commission. The date of filing of an election is the date the election is received by the commission at its offices in Des Moines. If such an election is made, the commission shall authorize and, within 30 days of the election, the attorney general shall file a civil action in district court on behalf of the aggrieved person. Failure to file within the 30-day period shall not, by itself, prejudice the rights of any of the parties.

b. Limitation. An election made under the previous paragraph must be made within 20 days of the receipt by the electing person of the determination of probable cause. The date of election is the date that the written notice of elections is filed with the commission.

c. Probable cause determination a prerequisite. No person may make an election pursuant to Iowa Code section 216.16A(1) until the commission has found probable cause regarding the complaint which is the subject of the election.

d. Notice required. An election to proceed in district court made under Iowa Code section 216.16A(1) is effective only if the electing person gives notice of the election to the commission and all other complainants and respondents to whom the election relates. Such notice shall be in writing, shall be delivered at the time the election is made, and may be made by regular mail.

e. Intervention. Once the commission commences an action in district court pursuant to Iowa Code section 216.17A(1) an aggrieved person may intervene in the action.

9.4(4) *Right-to-sue letter inapplicable.* A complainant need not, and should not, request a right-to-sue letter in order to file a civil action under Iowa Code section 216.16A(2) or to make an election as provided in Iowa Code section 216.16A(1).

9.4(5) *Appointment of attorney by court.* Upon application by a person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the court may:

a. Appoint an attorney for the person, or

b. Authorize the commencement or continuation of a civil action under Iowa Code section 216.16A(2) without the payment of fees, costs, or security if, in the opinion of the court, the person is financially unable to bear the costs of such action.

161—9.5(216) Commission procedures regarding complaints based on alleged unfair or discriminatory practices occurring after July 1, 1991.

9.5(1) *Time limitation of rule.* This rule applies only to alleged discriminatory housing or real estate practices occurring after July 1, 1991.

9.5(2) *Time limit for administrative complaint.* A complaint which alleges a discriminatory housing or real estate practice is governed by the 300-day time limit provided in 2009 Iowa Code Supplement section 216.15(13).

9.5(3) *Processing of complaint.*

a. Service. Upon the filing of a complaint:

(1) The commission shall, not later than ten days after such filing or the identification of an additional respondent under 9.5(3)*"d,"* serve on the respondent a notice identifying the alleged discriminatory housing practice and advising the respondent of the procedural rights and obligations of respondents under the applicable sections of Iowa Code chapter 216, together with a copy of the original complaint; and

(2) Each respondent may file, not later than ten days after receipt of notice from the commission, an answer to the complaint.

(3) The commission shall, not later than ten days after the filing of a complaint, serve the complainant a notice acknowledging receipt of the complaint and advising the complainant of the time limits and choice of forums provided under Iowa Code chapter 216.

b. Timely investigation. The commission will begin the investigation within 30 days of filing. If the commission is unable to complete the investigation within 100 days after the filing of the complaint, the commission shall notify the complainant and respondent in writing of the reasons for not doing so.

c. Amendments. Complaints and answers shall be under oath or affirmation and may be reasonably and fairly amended at any time.

d. Additional respondents.

(1) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under 9.5(3)*"a,"* to such person from the commission.

(2) Such notice, in addition to meeting the requirements of 9.5(3)*"a,"* shall explain the basis for the commission's belief that the person to whom the notice is addressed is properly joined as respondent.

e. Closure within one year. Within one year of the date of receipt of a complaint alleging a discriminatory housing or real estate practice, the commission shall take final administrative action with respect to that complaint unless it is impracticable to do so. If the commission is unable to make final disposition of the case within the one-year period, the commission shall notify the complainant and respondent in writing of the reasons for not doing so.

9.5(4) *Probable cause determination.*

a. Final investigative report. After the completion of the commission's investigation, the investigator shall prepare a final investigative report. This final investigative report shall include:

(1) The names and dates of contacts with witnesses excepting those witnesses who request to remain anonymous. The commission, however, may be required to disclose the names of such witnesses in the course of an administrative hearing or a civil action conducted pursuant to the Iowa civil rights Act;

(2) A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

(3) A summary description of other pertinent records;

(4) A summary of witness statements; and

(5) Answers to interrogatories.

b. Determination procedure. If, after the completion of investigation, a mediation agreement under Iowa Code section 216.15A(2)*"a"* to *"e"* has not been executed by the complainant and the respondent and approved by the commission, the commission shall conduct a review of the factual circumstances revealed as part of the investigation.

(1) If the commission determines that, based on the totality of the factual circumstances known at the time of the commission's review, no probable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall: issue a short and plain written statement of the facts upon which the no probable cause determination was based; dismiss the complaint; notify the aggrieved person(s) and the respondent(s) of the dismissal (including the written statement of facts) by regular or certified mail or personal service; and make public disclosure of the dismissal.

Respondent(s) may request that no public disclosure be made. Notwithstanding such request, the fact of dismissal, including the names of the parties, shall be public information available on request.

The commission's determination shall be based solely on the facts concerning the alleged discriminatory housing practice provided by complainant and respondent(s) and otherwise disclosed during the investigation.

(2) If the commission believes that probable cause may exist to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall forward the matter to the executive director or designee for consideration. In all such cases the executive director or designee shall determine, with advice from the office of the attorney general, whether, based on the totality of the factual circumstances known at the time of the decision, probable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The determination shall be based solely on the facts concerning the alleged discriminatory housing practice provided by complainant and respondent and otherwise disclosed during the investigation.

c. Determination of probable cause. A determination of probable cause shall be followed by the issuance of a probable cause order. A probable cause order:

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

(2) Shall be based on the final investigative report; and

(3) Need not be limited to facts or grounds that are alleged in the complaint. If the probable cause order is based on grounds that are alleged in the complaint, the commission will not issue the probable cause order with regard to those grounds unless the record of the investigation demonstrates that the respondent has been given an opportunity to respond to the allegation.

d. Timely determination. The commission shall make the probable cause determination within 100 days after the filing of the complaint unless it is impracticable to do so. If the commission is unable to make the determination within this 100-day period, the commission will notify the aggrieved person and the respondent by regular mail or personal service of the reasons for the delay.

e. Effect of probable cause determination. A finding of probable cause regarding a complaint alleging a discriminatory housing or real estate practice commences the running of the period during which an aggrieved person on whose behalf a complaint was filed, a complainant, or a respondent may, pursuant to Iowa Code section 216.16(1), elect to have the charges asserted in the complaint decided in a civil action in district court. If an election is made, the commission shall authorize the attorney general to file a civil action on behalf of the aggrieved person seeking relief. If no election is made, then the commission must schedule a hearing on the charges in the complaint.

f. Effect of no probable cause determination. A finding of "no probable cause" regarding a complaint alleging a discriminatory housing or real estate practice results in prompt dismissal of the complaint. If the finding is not reconsidered, the commission may take no further action to process that complaint except as may be necessary to carry out the commission's administrative functions.

g. Standard. The standard to determine whether a complaint alleging a discriminatory housing or real estate practice is supported by probable cause shall include consideration of whether the facts are sufficient to warrant initiation of litigation against the respondent.

9.5(5) *Hearing.*

a. Conduct. A contested case hearing regarding a complaint alleging a discriminatory housing or real estate practice is conducted on the same terms and in the same manner as any other contested case hearing conducted by the commission.

b. Hearing time frames.

(1) Trial date. The administrative law judge shall commence the hearing regarding a complaint alleging a discriminatory housing or real estate practice no later than 120 days following the issuance of the finding of probable cause, unless it is impracticable to do so. If the administrative law judge is unable to commence the hearing within 120 days after the issuance of the probable cause order, the administrative law judge shall notify the executive director, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing, of the reasons for not doing so.

(2) Decision date. The administrative law judge shall make findings of fact and conclusions of law within 60 days after the end of the hearing regarding a complaint alleging a discriminatory housing or real estate practice unless it is impracticable to do so. If the administrative law judge is unable to make findings of fact and conclusions of law within this period, or any succeeding 60-day period thereafter, the administrative law judge shall notify the executive director, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing, of the reasons for not doing so.

9.5(6) *Access to file information in housing cases.*

a. Nothing that is said or done in the course of mediation of a complaint of housing or real estate discrimination may be made public or used as evidence in a subsequent administrative hearing under subrule 9.5(5) or in civil actions under Iowa Code chapter 216, without the written consent of the persons concerned.

b. Notwithstanding the prohibitions and requirements with respect to disclosure of information contained in paragraph 9.5(6)*"a"* the commission will make information derived from an investigation, including the final investigative report, available to the aggrieved person and the respondent. Following completion of the investigation, the commission shall notify the aggrieved person and the respondent that the final investigative report is complete and will be provided upon request.

c. Where the commission has made a finding of no probable cause regarding a complaint alleging a discriminatory housing or real estate practice, the aggrieved person and the respondent may obtain information derived from the investigation and the final investigative report. Provided, however, that the phrase "information derived from the investigation" as used in this rule and in Iowa Code section 216.15A(2)*"f"* shall not include the contents of statements by witnesses other than the complainant or respondent.

d. Prior to a finding of either probable cause or no probable cause regarding a complaint alleging a discriminatory housing or real estate practice no access may be had to the information contained within the commission investigatory file except that:

(1) Any witness may request a copy of the witness's own statement made to the commission as part of the commission's investigation of the complaint,

(2) Any person may request copies of any information that that person sent to the commission in the course of processing the complaint,

(3) Any person may request copies of any information that the commission had previously sent to that person in the course of processing the complaint.

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161—9.6(216) Discovery methods in cases of alleged discrimination in housing.

9.6(1) When investigating a complaint of alleged discriminatory housing or real estate practices, the commission may, in addition to any other method of investigation authorized by law, obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

9.6(2) The rules providing for discovery and inspection in this chapter shall be liberally construed and shall be enforced to provide the commission with access to all relevant facts. Discovery shall be conducted in good faith, and responses to discovery requests, however made, shall fairly address and meet the substance of the request.

9.6(3) Notice of person's rights in the discovery process shall be given to the person from whom discovery is sought. This notice is sufficient if it sets out in brief the person's rights under these rules: to object to the discovery method; to seek a protective order; and to legal counsel.

9.6(4) A rule in this chapter requiring a matter to be under oath may be satisfied by an unsworn written statement in substantially the following form: "I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.

_____ _____"

Date Signature

161—9.7(216) Scope of discovery. Unless otherwise limited by order of the presiding officer for discovery in accordance with these rules, the scope of discovery is as follows:

9.7(1) *In general.* The commission may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending investigation, whether it relates to the claim or defense of any party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at a trial or contested case hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

9.7(2) *Supplementation of responses.* A party who has responded to a commission request for discovery is under a duty to supplement or amend the response to include information thereafter acquired as follows:

a. A party is under a duty seasonably to supplement the response with respect to any question directly addressed to:

(1) The identity and location of persons having knowledge of discoverable matters; and

(2) Any matter that bears materially upon a claim or defense asserted by any party.

b. A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which:

(1) The party knows that the response was incorrect when made; or

(2) The party knows that 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.

161—9.8(216) Protective orders.

9.8(1) Upon motion by a party or by the person from whom discovery is sought or by any person who may be affected thereby, and for good cause shown, the presiding officer for discovery:

a. May make any order which justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only by a method of discovery other than that selected by the commission;

(4) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the presiding officer for discovery;

(6) That a deposition after being sealed be opened only by order of a court, a commission contested case presiding officer, or the presiding officer for discovery;

(7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer for discovery.

b. Shall limit the frequency of use of the methods described in subrule 9.6(1) if the presiding officer for discovery determines that:

(1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(2) The commission has had ample opportunity by discovery in the action to obtain the information sought; or

(3) The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the objecting party's resources, and the importance of the issues at stake in the investigation.

9.8(2) If the motion for a protective order is denied in whole or in part, the presiding officer for discovery may, on such terms and conditions as are just, order that any party or other person provide or permit discovery.

9.8(3) Award of expenses of motion. If the motion is granted, the presiding officer for discovery shall, after opportunity for hearing, require the commission, if it opposed the motion, to pay to the party or other person making the motion the reasonable expenses incurred in obtaining the order, including attorneys' fees, unless the presiding officer for discovery finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the presiding officer for discovery shall, after opportunity for hearing, require the party or deponent who made the motion or the party or attorney advising such a motion or both of them to pay to the commission the reasonable expenses incurred in opposing the motion, including attorneys' fees, unless the presiding officer for discovery finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the presiding officer for discovery may apportion in a just manner the reasonable expenses incurred in relation to the motion.

161—9.9(216) Interrogatories.

9.9(1) *Availability; procedures for use.* The commission may serve written interrogatories to be answered by a party or, if the party from whom the information is sought is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party.

Each interrogatory shall be followed by a reasonable space for insertion of the answer. An interrogatory which does not comply with this requirement shall be subject to objection. The interrogatories must be accompanied by a written notice informing the person to whom the interrogatories are directed that a response is mandatory and that sanctions can be levied for a failure to respond.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer.

A party answering interrogatories must answer in the space provided or must set out each interrogatory immediately preceding the answer to it. A failure to comply with this rule shall be deemed a failure to answer and shall be subject to sanctions as provided in rule 161—9.16(216). Answers are to be signed by the person making them. Objections, if any, shall be served within 30 days after the interrogatories are served. The commission may move for an order under subrule 9.16(1) with respect to any objection to or other failure to answer an interrogatory.

The commission shall not serve more than 30 interrogatories on any party under the authority of this rule except upon agreement by the person from whom information is sought or leave of the presiding officer for discovery granted upon a showing of good cause. A motion for leave to serve more than 30 interrogatories must be in writing and shall set forth the proposed interrogatories and the reasons establishing good cause for their use.

Notwithstanding the provisions of this subrule the commission may, without limitation on the number of questions, solicit information from the parties in the form of a written questionnaire. The response to these questions, however, cannot be compelled under rule 161—9.16(216).

9.9(2) *Scope.* An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the presiding officer for discovery may order that such an interrogatory need not be answered until a later time.

9.9(3) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the commission as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the commission reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the commission to locate and identify as readily as can the party served, the records from which the answer may be ascertained.

161—9.10(216) Requests for admission.

9.10(1) *Availability; procedures for requests.* The commission may serve upon any party a written request for the admission, for purposes of all proceedings relating to the pending complaint only, of the truth of any matters within the scope of rule 161—9.7(216) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying.

Each matter of which an admission is requested shall be separately set forth.

Notice of the effect of an admission shall be given to the person from whom the admission is sought.

The commission shall not serve more than 30 requests for admission on any party except upon agreement of the party from whom admissions are sought or leave of the presiding officer for discovery granted upon a showing of good cause. A motion for leave of the presiding officer for discovery to serve more than 30 requests for admission must be in writing and shall set forth the proposed requests and the reasons establishing good cause for their use.

9.10(2) *Time for and content of responses.* The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the presiding officer for discovery may on motion allow, the party to whom the request is directed serves upon the commission a written answer or objection addressed to the matter, signed by the party or by the party's attorney.

If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the party's answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of subrule 9.16(3), deny the matter or set forth reasons why the party cannot admit or deny it.

9.10(3) *Determining sufficiency of responses.* The commission may move to determine the sufficiency of the answers or objections. Unless the presiding officer for discovery determines that an objection is justified, the presiding officer for discovery shall order that an answer be served. If the presiding officer for discovery determines that an answer does not comply with the requirements of this rule, the presiding officer for discovery may order either that the matter be admitted or that an amended answer be served. The presiding officer for discovery may, in lieu of these orders, determine that final disposition of the request be made at a designated time prior to completion of the investigation. The provisions of paragraph 9.16(1)*"d"* apply to the award of expenses incurred in relation to the motion.

161—9.11(216) Effect of admission. Any matter admitted under rule 161—9.10(216) is conclusively established in all proceedings relating to the pending complaint unless the court or contested case administrative law judge on motion permits withdrawal or amendment of the admission. The court or contested case administrative law judge may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the commission or the party opposing the motion fails to satisfy the court or contested case administrative law judge that withdrawal or amendment will prejudice the commission in maintaining the commission's action on the merits.

161—9.12(216) Production of documents and things and entry upon land for inspection and other purposes. The commission may serve on any party a request:

9.12(1) To produce and permit the commission, or someone acting on the commission's behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained, translated, if necessary, by the party upon whom the request is served through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of rule 161—9.7(216) and which are in the possession, custody or control of the party upon whom the request is served; or

9.12(2) Except as otherwise provided by statute, to 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, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of rule 161—9.7(216).

161—9.13(216) Procedures for documents and inspections. The request shall set forth the items to be inspected either by individual item or by category and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request. The presiding officer for discovery may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted

as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified.

The commission may move for an order under rule 161—9.16(216) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

161—9.14(216) Physical and mental examination of persons. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the presiding officer for discovery may order the party to submit to a physical or mental examination by a health care practitioner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion of the commission for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

161—9.15(216) Report of health care practitioner.

9.15(1) If requested by the party against whom an order is made under rule 161—9.14(216) or the person examined, the commission shall deliver a copy of the examiner's detailed written report setting out the findings, including results of all tests made, diagnosis and conclusions, together with like reports of all earlier examinations of the same condition. After delivery, if requested by the commission, the party against whom the order is made shall deliver a like report of any examination of the same condition, previously or thereafter made, unless the party shows an inability to obtain a report of examination of a nonparty. The presiding officer for discovery on motion may order a party or the commission to deliver a report on such terms as are just. If an examiner fails or refuses to make a report, a court or administrative law judge hearing a case based on the complaint at issue may exclude the examiner's testimony.

9.15(2) By requesting and obtaining a report of the examination so ordered, the party examined waives any privilege the party may have in that action or any other proceeding involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.

9.15(3) This rule applies to examination made by agreement, unless the agreement expressly provides otherwise.

161—9.16(216) Consequences of failure to make discovery.

9.16(1) *Motion for order compelling discovery.* The commission, upon reasonable notice to the party from whom discovery was sought and all persons affected thereby, may move for an order compelling discovery as follows:

a. Appropriate officer. A motion to compel discovery shall be made to the presiding officer for discovery.

b. Motion. If a deponent fails to answer a question propounded or submitted under rule 161—9.17(216), or a corporation or other entity fails to make a designation under subrule 9.18(5), or a party fails to answer an interrogatory submitted under rule 161—9.9(216), or if a party, in response to a request for inspection submitted under rule 161—9.12(216), fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the commission may move for an order compelling an answer, a designation, or an inspection in accordance with the request. When taking a deposition on oral examination, the commission may complete or adjourn the examination before moving for an order.

Any order granting a motion made under this rule shall include a statement that a failure to comply with the order may result in the imposition of sanctions pursuant to rule 161—9.16(216).

In ruling on such motion, the presiding officer for discovery may make such protective order as the presiding officer for discovery would have been empowered to make on a motion pursuant to subrule 161—9.8(1).

c. Evasive or incomplete answer. For purposes of this subrule an evasive or incomplete answer is to be treated as a failure to answer.

d. Award of expenses of motion. If the motion is granted, the presiding officer for discovery shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the

party or attorney advising such conduct or both of them to pay to the commission the reasonable expenses incurred in obtaining the order, including attorneys' fees, unless the presiding officer for discovery finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the presiding officer for discovery shall, after opportunity for hearing, require the commission to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorneys' fees, unless the presiding officer for discovery finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the presiding officer for discovery may apportion in a just manner the reasonable expenses incurred in relation to the motion.

e. Notice to party. If the motion is granted, the presiding officer for discovery shall mail or cause to have mailed a copy of the order to counsel and to the party or parties whose conduct, individually or by counsel, necessitated the motion.

9.16(2) *Failure to comply with order.*

a. Sanctions by court in district where deposition is taken. If a deponent fails to be sworn or to answer a question after being directed to do so by the presiding officer for discovery, the office of the attorney general may petition for enforcement of that order in the judicial district in which the deposition is being taken. Failure by the deponent to obey an order of enforcement from the district court may be considered a contempt of that court.

b. Sanctions by the presiding officer for discovery. If a party or an officer, director, or managing agent of a party or a person designated under subrule 9.18(5) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under 9.16(1) or under rule 161—9.14(216), the presiding officer for discovery may make such orders in regard to the failure as are just, and among others, the following:

(1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of any action or proceeding relating to the subject matter of the investigation in accordance with the claim of the party opposing the position of the disobedient party;

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting such party from introducing designated matters in evidence in any action or proceeding relating to the subject matter of the investigation;

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(4) In lieu of any of the foregoing orders or in addition thereto, the presiding officer for discovery shall require the disobedient party or the attorney advising such party or both to pay the reasonable expenses, including attorneys' fees, caused by the failure, unless the presiding officer for discovery finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

c. Enforcement petition. In addition to any of the alternatives of paragraph *"b"* above, the office of the attorney general may petition for enforcement of the order compelling discovery in the appropriate judicial district. Failure by a party to obey an order of enforcement from the district court may be considered a contempt of that court.

9.16(3) *Expenses on failure to admit.* If a party fails to admit the genuineness of any document or the truth of any matter as requested under rule 161—9.10(216), and if the commission thereafter proves the genuineness of the document or the truth of the matter, the commission may move for an order requiring the party to pay the reasonable expenses incurred in making that proof, including reasonable attorneys' fees. The presiding officer for discovery shall make the order unless the presiding officer for discovery finds that:

a. The request was held objectionable pursuant to rule 161—9.10(216),

b. The admission sought was of no substantial importance,

c. The party failing to admit had reasonable ground to believe that the party might prevail on the matter, or

d. There was other good reason for the failure to admit.

9.16(4) *Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection.* If a party or an officer, director, or managing agent of a party or a person designated under subrule 9.18(5) to testify on behalf of a party fails to appear before the officer who is to take the person's deposition, after being served with a proper notice; or to serve answers or objections to interrogatories submitted under rule 161—9.9(216), after proper service of the interrogatories; or to serve a written response to a request for inspection submitted under rule 161—9.12(216), after proper service of the request, the presiding officer for discovery on motion of the commission may make such orders in regard to the failure as are just, and among others it may take any action authorized under 9.16(2)*"b"*(1) to (4).

The failure to act described in this subrule may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by rule 161—9.8(216).

9.16(5) *Motions relating to discovery.* No motion relating to depositions or discovery shall be filed or considered by the presiding officer for discovery unless the motion alleges that the movant has made a good-faith but unsuccessful attempt to resolve the issues raised by the motion with counsel for the party or entity whom the motion concerns without intervention of the presiding officer for discovery.

161—9.17(216) Depositions upon oral examination.

9.17(1) *When depositions may be taken.* The commission may take a deposition in an investigation of a complaint of housing discrimination at any time during the pendency of that investigation.

9.17(2) *Recording.* The administrative law judge charged with the duty of determining probable cause under Iowa Code subsection 216.15(3) may order that the testimony at such an investigative deposition be recorded by other than stenographic means, in which event the order shall designate the manner of recording the deposition, and may include other provisions to ensure that the recorded testimony will be accurate and trustworthy. If the order is made, the party from whom discovery is sought or the deponent may nevertheless arrange to have a stenographic transcription made at that party's or deponent's own expense. An order of the administrative law judge is not required to record testimony by nonstenographic means if the deposition is also to be recorded stenographically.

9.17(3) *Place of deposition.*

a. Oral depositions may be taken only within this state.

b. If the deponent is a party or the officer, partner or managing agent of a party which is not a natural person, the deponent shall be required to submit to examination in Polk County, unless otherwise ordered by the presiding officer for discovery.

9.17(4) *Failure to attend; expenses.* If the commission official fails to attend and proceed with a noticed deposition and the party from whom discovery is sought attends in person or by attorney pursuant to the notice, the presiding officer for discovery may order the commission to pay to such party the reasonable expenses incurred by the party and the other party's attorney in attending, including reasonable attorneys' fees.

9.17(5) *Depositions by telephone.* Any deposition permitted by these rules may be taken by telephonic means.

When the commission intends to take the deposition of any person upon oral examination by telephonic means, the commission shall give reasonable notice thereof in writing to any party who is to be deposed and to any other deponent. Such notice shall contain all other information required by subrule 9.18(1) and shall state that the telephone conference will be arranged and paid for by the commission. No part of the expense for telephone service shall be taxed as costs.

If the commission desires to present exhibits to the witness during the deposition, copies shall be sent to the deponent and any party who is to be deposed, prior to the taking of the deposition.

Nothing in this rule shall prohibit a party from whom the discovery is sought or counsel for that party or for the deponent from being in the presence of the deponent when the deposition is taken.

161—9.18(216) Notice for oral deposition.

9.18(1) Whenever the commission desires to take the deposition of any person upon oral examination, the commission shall give reasonable notice in writing to the deponent and any party who is to be deposed. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs.

9.18(2) If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

9.18(3) The notice to a party deponent may be accompanied by a request made in compliance with rules 161—9.12(216) and 161—9.13(216) for the production of documents and tangible things at the taking of deposition. The procedure of rule 161—9.13(216) shall apply to the request.

9.18(4) No subpoena is necessary to require the appearance of a party for a deposition. Service on the party or the party's attorney of record of notice of the taking of a deposition of the party or of an officer, partner or managing agent of any party who is not a natural person, as provided in 9.18(1), is sufficient to require the appearance of a deponent for the deposition.

9.18(5) A notice or subpoena may name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the witness will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subrule does not preclude taking a deposition by any other procedure authorized in these rules.

161—9.19(216) Conduct of oral deposition.

9.19(1) *Examination; recording examination; administering the oath; objections.* Examination of witnesses by the commission may proceed as permitted at the hearing. The commission investigator or other officer before whom the deposition is to be taken shall put the witness under oath and shall personally, or by someone acting under the investigator or officer's direction and in the investigator or officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subrule 9.17(2). All objections made at the time of the examination to the qualifications of the investigator or other officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the investigator or officer upon the deposition. Evidence objected to shall be taken subject to the objections.

9.19(2) *Motion to terminate or limit examination.* At any time during the taking of the deposition, on motion of the party being deposed or other deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the presiding officer for discovery may order the commission to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in rule 161—9.8(216). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the presiding officer for discovery. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

If the motion is granted, the presiding officer for discovery shall, after opportunity for hearing, require the commission to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorneys' fees, unless the presiding officer for discovery finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the presiding officer for discovery shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the commission the reasonable expenses incurred in opposing the motion, including attorneys' fees, unless the presiding officer for discovery finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the presiding officer for discovery may apportion in a just manner the reasonable expenses incurred in relation to the motion.

161—9.20(216) Reading and signing depositions.

9.20(1) *Where reading or signing not required.* No oral deposition reported and transcribed by an official court reporter or certified shorthand reporter of Iowa need be submitted to, read or signed by the deponent.

9.20(2) *Submission to witness; changes; signing.* In other cases, if and when the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the witness is ill or dead or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission, the investigator or officer shall sign it and state on the record the fact of the waiver or of the illness, death, or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor. The deposition may then be used as fully as though signed unless on a motion to suppress the tribunal hearing the motion holds that the reason given for the refusal to sign requires rejection of the deposition in whole or in part.

161—9.21(216) Certification and return; copies.

9.21(1) When the deposition is transcribed, the investigator or other officer shall certify on the deposition that the witness was duly sworn and that the deposition is a true record of the testimony given by the witness. Documents and things produced for inspection during the deposition shall, upon the request of the investigator, be marked for identification and annexed to the deposition, except that:

a. The person producing the materials may substitute copies to be marked for identification, if the investigator is provided fair opportunity to verify the copies by comparison with the originals;

b. If the person producing the materials requests their return, the investigator shall mark, copy, and, at some time prior to the completion of the investigation, return them to the person producing them. The materials may then be used in the same manner as if annexed to the deposition.

9.21(2) Upon payment of reasonable charges therefor, the commission shall furnish a copy of the deposition to the party who was deposed or to the deponent.

161—9.22(216) Before whom taken. The officer taking the deposition shall not be a party, a person financially interested in the action, an attorney or employee of any party, an employee of any such attorney, or any person related within the fourth degree of consanguinity or affinity to a party, a party's attorney, or an employee of either of any party.

161—9.23(216) Deposition subpoena.

9.23(1) The commission may issue subpoenas for persons named in and described in a notice to take depositions under rule 161—9.18(216). Subpoenas may also be issued as provided by statute or by rule 161—3.14(216).

9.23(2) No resident of Iowa shall be subpoenaed to attend a deposition out of the county where the deponent resides, or is employed, or transacts business in person.

161—9.24(216) Costs of taking deposition. Costs of taking and proceeding to procure a deposition shall be paid by the commission.

161—9.25(216) Irregularities and objections.

9.25(1) *Notice.* All objections to any notice of taking any depositions are waived unless promptly served in writing upon the commission.

9.25(2) *Officer.* Objection to the commission investigator or other officer's qualification to take a deposition is waived unless made before such taking begins, or as soon thereafter as objector knows it or could discover it with reasonable diligence.

9.25(3) *Taking depositions.* Errors or irregularities occurring during an oral deposition as to any conduct or manner of taking it, or the oath, or the form of any question or answer, and any other errors which might thereupon have been cured, obviated or removed, are waived unless seasonably objected to during the deposition.

161—9.26(216) Service of discovery. Service of documents pertaining to discovery procedures described in this chapter, other than subpoenas, may be accomplished by the same means as in rule 161—4.6(17A).

161—9.27(216) Appeals. Appeals from an imposition of sanctions by the presiding officer for discovery under rule 161—9.16(216) are filed and processed in the same manner as appeals under rule 161—4.23(17A). Appeals from other decisions rendered by the presiding officer for discovery are filed and processed in the same manner as appeals under rule 161—4.25(17A).

161—9.28(216) Representation of commission. At all discovery hearings, motions, and appeals, including those proceedings before the presiding officer for discovery, the commission may be represented by a member of the attorney general's office.

These rules are intended to implement Iowa Code sections 216.5(13), 216.8 and 216.8A.

Appendix A
Form 1

Request for Assistance Animal as a Reasonable Accommodation in Housing:
Health Care Professional Form

Requester's Name: _____
Address: _____
Telephone: _____ E-mail: _____
I, _____, intend to request that _____ permit me to keep an assistance animal as a reasonable accommodation in housing for my disability. In connection with that application, I am requesting that you complete this form regarding my disability.

_____ _____
Requester's Signature Date

TO BE COMPLETED BY HEALTH CARE PROFESSIONAL

1. Does the individual identified above have a disability?
☐ Yes ☐ No
2. If yes, is the need for an assistance animal related to that disability? For example, does or would an assistance animal alleviate one or more of the symptoms or effects of the disability?
☐ Yes ☐ No

By signing below, the undersigned health care professional/licensee certifies that he/she 1) has met with the patient or client in person or by telemedicine, 2) is sufficiently familiar with the patient or client and the disability, **and** 3) is legally and professionally qualified to make the finding.
Health Care Provider's Name (printed): _____
Signature: _____
Date: _____

References: Iowa Code sections 216.8B and 216.8C
Resources: https://icrc.iowa.gov/, 515-281-4121, 1-800-457-4416

This document may contain privileged and confidential information and/or protected health information intended solely for the use by the recipient housing provider. Please exercise care to avoid dissemination.

[**ARC 4970C**, IAB 3/11/20, effective 4/15/20]

[Filed 7/17/92, Notice 6/10/92—published 8/5/92, effective 9/9/92]
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CHAPTER 10
DISCRIMINATION IN PUBLIC ACCOMMODATIONS

[Prior to 1/13/88, see Civil Rights 240—Ch 7]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

161—10.1(216) Statement of purpose. The commission's purpose in adopting these rules is to provide guidelines on what actions or activities may produce a discriminatory impact in public accommodations.

161—10.2(216) Discrimination prohibited. No person shall be discriminated against on the basis of race, creed, color, sex, sexual orientation, gender identity, national origin, religion or disability by any public accommodation by:

10.2(1) Providing any disposition, service, financial aid, or benefit to an individual which is different, or is provided in a different manner, from that provided to other members of the general public, except to reasonably accommodate a member of the protected classes who otherwise might be totally precluded from receiving a benefit, access to, or participation in a program.

10.2(2) Subjecting any individual to segregation or separate treatment in any matter related to that individual's receipt of any disposition, service, financial aid, or benefit provided to other members of the general public.

10.2(3) Restricting an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any disposition, service, financial aid, or benefit provided to other members of the general public.

10.2(4) Treating an individual differently from others in determining whether that individual satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any disposition, service, financial aid, function, or benefit available to other members of the general public.

10.2(5) Denying an individual an opportunity to participate in a program through the provision of service or otherwise afford that individual an opportunity to do so which is different from that afforded to other members of the general public.

[**ARC 8744B**, IAB 5/5/10, effective 6/9/10]

These rules are intended to implement Iowa Code chapter 216.

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1 Effective date of Ch 7 delayed by the Administrative Rules Review Committee 70 days.
Effective date of 7.2(1) and 7.3 delayed by the Administrative Rules Review Committee until 45 days after convening of the next General Assembly.

CHAPTER 11
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

161—11.1(17A,22,216) Definitions. As used in this chapter:

"Agency" means the Iowa civil rights commission.

"Confidential record" means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

"Custodian" means the executive director, or a person lawfully delegated authority by the executive director to act for the agency in implementing Iowa Code chapter 22.

"Open record" means a record other than a confidential record.

"Personally identifiable information" means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

"Record" means the whole or a part of a "public record" as defined in Iowa Code section 22.1.

"Record system" means any group of records under the control of the agency from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

161—11.2(17A,22,216) Statement of policy. This chapter implements Iowa Code section 22.11 and chapter 216 by establishing agency policies and procedures for the maintenance of records. The purpose of this chapter is to facilitate public access to open records. It also seeks to facilitate sound agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This agency is committed to the policies set forth in Iowa Code chapter 22; agency staff shall cooperate with members of the public in implementing the provisions of that chapter.

161—11.3(17A,22,216) Requests for access to records.

11.3(1) *Location of record.* A request for access to a record should be directed to the Iowa civil rights commission or the particular agency office where the record is kept. The request shall be directed to the Iowa Civil Rights Commission, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319-1004. If a request for access to a record is misdirected, agency personnel will promptly forward the request to the appropriate person within the agency.

11.3(2) *Office hours.* Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

11.3(3) *Request for access.* Requests for access to open records may be made in writing or in person. The office may also accommodate telephone requests where appropriate. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail or telephone requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

11.3(4) *Response to requests.* Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 161—11.4(17A,22,216) and other applicable provisions of law.

11.3(5) *Security of record.* No person may, without permission from the custodian, search or remove any record from agency files. Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

11.3(6) *Copying.* A reasonable number of copies of an open record may be made in the agency's office. If photocopy equipment is not available in the agency office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

11.3(7) *Fees.*

a. When charged. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records shall be prominently posted in agency offices. Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at cost as determined and posted in agency offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one-half hour. The custodian shall prominently post in agency offices the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. Search fees. If the request requires research or if the record or records cannot reasonably be readily retrieved by the office, the requester will be advised of this fact. Reasonable search fees may be charged where appropriate. In addition, all costs for retrieval and copying of information stored in electronic storage systems may be charged to the requester.

e. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds $25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

[**ARC 8733B**, IAB 5/5/10, effective 6/9/10]

161—11.4(17A,22,216) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law may authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 161—11.3(17A,22,216).

11.4(1) *Proof of identity.* A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

11.4(2) *Requests.* The custodian may require that a request to examine and copy a confidential record be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

11.4(3) *Notice to subject of record and opportunity to obtain injunction.* After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in

that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

11.4(4) *Request denied.* When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

a. The name and title or position of the custodian responsible for the denial; and

b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

11.4(5) *Request granted.* When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

161—11.5(17A,22,216) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order, to refuse to disclose that record to members of the public.

11.5(1) *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order, authorizes the custodian to treat the record as a confidential record, may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

11.5(2) *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the agency by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

11.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the agency does not request that it be withheld from public inspection under Iowa Code section 22.7(3) or 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

11.5(4) *Timing of decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

11.5(5) *Request granted or deferred.* If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify

any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

11.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record need not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

161—11.6(17A,22,216) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian. The request to review a written statement must be dated and signed by requester, and shall include the current address and telephone number of the requester or the requester's representative.

161—11.7(17A,22,216) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. Additional requirements may be necessary for special classes of records. Appearance of counsel on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

161—11.8(17A,22,216) Notice to suppliers of information. When the agency requests a person to supply information about that person, the agency shall notify the person of the use that will be made of the information, which persons outside the agency might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means. Notice need not be given in connection with discovery requests in litigation or administrative proceedings, subpoenas, investigations of possible violations of law, or similar demands for information.

161—11.9(17A,22,216) Disclosures without the consent of the subject.

11.9(1) Open records are routinely disclosed without the consent of the subject.

11.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, may generally occur without notice to the subject:

a. For a routine use as defined in rule 161—11.10(17A,22,216) or in any notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record; provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if any authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency under Iowa Code section 2A.3.

f. To the citizens' aide/ombudsman under Iowa Code section 2C.9.

g. Disclosures in the course of employee disciplinary proceedings.

h. In response to a court order or subpoena.

161—11.10(17A,22,216) Routine use.

11.10(1) Defined. "Routine use" means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

11.10(2) To the extent allowed by law, the following uses may be considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer or employee, or on the custodian's initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the agency or officer which this office is advising or representing in the matter in question or to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

161—11.11(17A,22,216) Consensual disclosure of confidential records.

11.11(1) *Consent to disclosure by a subject individual.* The subject may consent in writing to agency disclosure of confidential records as provided in rule 161—11.7(17A,22,216).

11.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

161—11.12(17A,22,216) Availability of records.

11.12(1) *General.* Agency records are open for public inspection and copying unless otherwise provided by rule or law. The office also has possession of records which may be open records but which are copies of materials from another agency, which have been filed in judicial or administrative proceedings,

or which are available in the state law library. This office will often refer persons to the originating agency, the clerk of the appropriate court, or the law library for those records. This is consistent with the functions of those entities, ensures that the requester get a clean official copy of the record, and protects the integrity of attorney files against unintended disclosures of confidential information.

11.12(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Tax records made available to the agency. (Iowa Code sections 422.72,422.20)

b. Records which are exempt from disclosure under Iowa Code section 22.7.

c. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))

d. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)*"d."*

e. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making investigations, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (Iowa Code sections 17A.2, 17A.3, 216.15)

f. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10, 622.11, Iowa R.C.P. 122(c), Fed. R.Civ.P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

g. Records collected or generated by Iowa civil rights commission staff or commissioners relating to any step in the civil rights complaint process which contain personally identifiable information.

h. Any other records made confidential by law. (Iowa Code section 216.15)

11.12(3) *Authority to release confidential records.* The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect these records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 161—11.4(17A,22,216). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested persons and withhold the records from inspection as provided in subrule 11.4(3).

161—11.13(17A,22,216) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 161—11.1(17A,22,216). Unless otherwise stated, the authority for this office to maintain the record is provided by Iowa Code chapter 216, the statutes governing the subject matter of the record, and the enabling statutes of the agency client, where applicable. The record systems maintained by the agency shall include but are not limited to the following:

11.13(1) *Investigatory files.* These files or records contain information collected or generated by Iowa civil rights commission staff or commissioners relating to any step in the complaint process beginning with the consideration or contemplation of filing a complaint up to the issuance of a notice of public hearing. Most of these records are paper files. However, some case management records and other records are in computer form. Those files are commonly indexed by the name of the opposing party. Some files are indexed by subject matter, witness, agency or other category.

11.13(2) *Litigation files.* These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include pleadings, briefs, depositions, discovery material, docket sheets, documents, general correspondence, attorney-client correspondence, attorneys' notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. Most of these records are paper files. However, some case management records and other records are in computer form. The files are generally maintained by division and are commonly indexed by the name of the

opposing party. Some files are indexed by subject matter, witness, agency, or other category. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy.

11.13(3) *Records.* State of Iowa files are a subpart of the complaint file system and contain general information on an individual or business including correspondence, investigative information, agency subpoenas, demands for information and responses. Work product information contained in the state of Iowa file is considered confidential. The records are subject to the same confidentiality provisions as are complaint files.

11.13(4) *Personnel files.* The Iowa civil rights commission and individual divisions maintain files containing information about employees and applicants for positions with the agency. The files contain payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

161—11.14(17A,22,216) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 161—11.1(17A,22,216). The records listed may contain information about individuals. Unless otherwise designated, the authority for this office to maintain the record is provided by Iowa Code chapter 216, the statutes governing the subject matter of the record. Those privileges may render some or all of the following information confidential whether or not asserted in the description of the record. All records are stored both on paper and in automated data processing systems unless otherwise noted.

11.14(1) *Administrative records.* This includes documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, printing and supply requisitions.

11.14(2) *Publications.* The office receives a number of books, periodicals, newsletters, government documents, etc. These materials would generally be open to the public but may be protected by copyright law. Most publications of general interest are available in the state law library.

11.14(3) *Office publications.* This office issues a variety of materials including press releases, statistical reports, Iowa civil rights commission case reports and annual reports.

11.14(4) *Rule-making records.* Official documents executed during the promulgation of agency rules and public comments are available for public inspection.

11.14(5) *Office manuals.* Information in office manuals such as the investigator handbook are available for public inspection.

11.14(6) *All other records.* Records are open if not exempted from disclosure by law.

161—11.15(17A,22,216) Data processing systems. The data processing systems used by the agency compare personally identifiable information in one record system with personally identifiable information in another record system.

161—11.16(17A,22,216) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.
2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the regulations of another agency.
4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.
5. Make available records compiled in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject

individual or party to such litigation or proceedings shall be governed by applicable constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations.

6. Make available to the general public records which would otherwise not be available under Iowa Code section 216.15(4).

161—11.17(17A,22,216) Access to file information. The disclosure of information whether a change has been filed or not, or revealing the contents of any file is prohibited except in the following circumstances:

11.17(1) If a final decision per 161—subrule 2.1(10) has been reached, a party or a party's attorney may, upon showing that a petition appealing the commission action has been filed, have access to the commission's case file on that complaint.

11.17(2) If a case has been approved for public hearing and the notice of hearing has been issued, any party or party's attorney may have access to file information through prehearing discovery measures provided in 161—4.6(216). In addition, file information may be sought pursuant to Iowa Code subsection 17A.13(2).

11.17(3) If a decision rendered by the commission in a contested case has been appealed, any party or party's attorney may, upon showing that the decision has been appealed, have access to the commission's case file on that complaint.

The fact that copies of documents related or gathered during an investigation of a complaint are introduced as evidence during the course of a contested case proceeding does not affect the confidential status of all other documents within the file which are not introduced as evidence.

11.17(4) If the commission has issued a right-to-sue letter per 161—subrule 3.10(3), a party or party's attorney may have access to the commission's case file on that complaint.

11.17(5) Only upon written notification, from an attorney or a party, that the attorney represents that party may the attorney then obtain access to the commission case file on the same terms as that party.

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[1] Effective date of 161—11.17(2), 11.17(4) and 11.17(5) delayed 70 days by the Administrative Rules Review Committee at its meeting held March 9, 1993; delayed until adjournment of the 1994 Session of the General Assembly by this Committee May 11, 1993.

CHAPTERS 12 to 14
Reserved

CHAPTER 15
MISCELLANEOUS PROVISIONS

[Prior to 1/13/88, see Civil Rights 240—Ch 11]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

161—15.1(216) Partial invalidity. If any provision of commission rules shall be held invalid, the remainder of the rules shall not be affected thereby. The invalidity of any of the rules with respect to a particular person or under particular circumstances shall not affect their application to other persons or different circumstances.

161—15.2(216) Availability of rules. Copies of commission rules shall be available to the public on request.

161—15.3(17A,ExecOrd11) Waiver of requirements imposed by commission rule.

15.3(1) *Filing of a request for waiver.* Any person may file a request for waiver of an administrative rule of the civil rights commission by writing a proper request which is received by Executive Director, Iowa Civil Rights Commission, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319-1004. All requests for waiver of an administrative rule must be in writing and meet all requirements set out in paragraph 15.3(2)*"a."* A request for a waiver is filed by any of the methods listed in rule 161—3.5(216). The date a request for waiver is filed is governed by 161—subrule 3.5(4). The commission shall provide the requester with a file-stamped copy of the request if the requester provides an extra copy for this purpose.

15.3(2) *Form of request.*

a. Required contents. A request for waiver of a rule must:

(1) Prominently state on its face that it is a request for a waiver of an administrative rule; and

(2) State the name and address of the entity or person for whom a waiver is requested; and

(3) Describe or give the citation of the specific rule for which a waiver is requested; and

(4) State the specific waiver requested.

The commission shall not process a filing as a request for a waiver if that filing does not conform to the requirements of this paragraph.

b. Suggested contents. In addition, a request for waiver of a rule should also:

(1) State all relevant facts that the requester believes would justify a waiver.

(2) State the reasons the requester believes will justify a waiver.

(3) State the history of the commission's action relative to the requester. If the request is in connection with a complaint of discrimination on file with the commission, the requester should identify the complaint at issue including, if possible, the complaint number.

(4) State any information regarding the commission's treatment of similar cases, if known.

(5) State the name, address and telephone number of any person inside or outside state government who would be adversely affected by the grant of the request or who otherwise possesses knowledge of the matter with respect to the waiver request.

15.3(3) *Procedure for evaluating requests for waiver.*

a. Service of request. Within 30 days after the receipt of a request for waiver of an administrative rule, the commission shall provide a copy to all persons who are required to receive one by a provision of law. The commission may also provide a copy of the request to those individuals whom the requester has identified as being adversely affected by a grant of the request. In the case of a request made in connection with a complaint of discrimination on file with the commission, the commission shall provide a copy of the request to all other parties in the case. Service may occur by regular mail. If necessary for maintenance of the confidentiality of a commission investigation, information may be redacted from a request for waiver before the request is provided to persons other than the requester.

b. Decision maker for request. The decision whether to grant a request for waiver shall be made either by the executive director or upon a vote of the commissioners. If the request is made in connection

with a complaint of discrimination on file with the commission, any discussion by the commissioners of the request for waiver may be in closed session.

c. Investigation of allegations. The decision maker or a designated member of the commission staff may conduct an investigation into any factual issue which is relevant to the request for a waiver. A refusal by the requester to cooperate in this investigation may be grounds to deny the request for waiver. In the case of a request made in connection with a complaint of discrimination, if any party to the complaint refuses to cooperate in the investigation, the decision maker may infer that the requested information would be adverse to the uncooperative party.

d. Time frame for decision on request. The commission shall render a decision on a request for waiver of a rule within 120 days of receipt of the request. During this period the commission may extend the time for rendering a decision by notifying all persons who were notified of the request pursuant to paragraph 15.3(3)*"a"* that the time for rendering a decision has been extended. This notice shall include a new time frame for rendering the decision. Failure to render a decision or extend the time for rendering a decision within the required period shall be deemed a denial of the request.

e. Notification of decision. The commission shall send any decision rendered concerning the request for waiver to all persons who were notified of the request pursuant to paragraph 15.3(3)*"a."*

f. Form of grant of request. Any waiver shall be the narrowest exception possible to the provisions of the rule. A waiver shall not be permanent unless the requester has shown that a temporary waiver is impracticable. The commission may renew a temporary waiver without a request if the commission finds that the factors of paragraph 15.3(4)*"b"* remain valid.

15.3(4) *Standard for evaluating request for waiver.*

a. Burden of persuasion. The burden of persuasion rests with the person who requests from the commission a waiver of a rule.

b. Standard. A request for a waiver shall be evaluated based on the unique, individual circumstances set out in the request. A waiver may be granted only if the decision maker finds clear and convincing evidence that:

(1) The application of the rule would pose an undue hardship on the person for whom the waiver is requested; and

(2) The waiver from the requirements of a rule in the specific case would not prejudice the substantial legal rights of any person; and

(3) The provisions of a rule subject to a request for a waiver are not specifically mandated by statute or another provision of law; and

(4) Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested; and

(5) Granting the request would not waive any requirement created or duty imposed by statute.

15.3(5) *Exceptions to waiver.*

a. Waiver in contested cases. This rule does not apply to any request for a waiver of a rule which is made in connection with a contested case before the commission. Waiver requests made in connection with a contested case are governed by rule 161—4.29(17A).

b. Not applicable to this rule. No person may request a waiver from the requirements of this rule.

c. Requests by commission officials. No commissioner, commission staff member or other commission official may file a request for a waiver of a requirement placed upon that individual as part of that individual's official duties.

d. Time requirements. This rule does not authorize the commission to waive any time requirement of an administrative rule.

e. No effect on case status. In the case of a request made in connection with a complaint of discrimination on file with the commission, the commission may not grant a request for waiver if this would either close a case which was open at the time of the request or reopen a case which was closed at the time of the request. The reopening provisions of rule 161—3.16(216), however, shall apply.

15.3(6) *Public inspection of waiver requests.* All waiver requests and responses shall be indexed by administrative rule number and available to members of the public for inspection at the offices of the Civil Rights Commission, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319.

Identifying information concerning any person, including parties to complaints on file, may be withheld by the commission in order to protect the confidentiality of case-related information as required by Iowa Code section 216.15(5).

[**ARC 8733B**, IAB 5/5/10, effective 6/9/10; **ARC 5824C**, IAB 8/11/21, effective 9/15/21]

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