

Rules and Regulations of the Equal Opportunity Commission  
 State of Nebraska  
 Nebraska Civil Rights Act  
 Public Accommodations  
 September 2, 1982

Title 141  
 Nebraska Equal Opportunity Commission  
 Nebraska Civil Rights Act of 1969  
 Public Accommodations

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**Title 141**  
**Nebraska Equal Opportunity Commission**  
**Nebraska Civil Rights Act of 1969**  
**Public Accommodations**  
**Rules and Regulations**

**Chapter 1. Definitions.**

**1.001.**

As used herein, the term “Act” shall mean the Nebraska Civil Rights Act of 1969 relating to Public Accommodations.

**1.002.**

As used herein, the term “Places of Public Accommodation” shall have the same meaning as set forth in section 20-133 of the Act, as amended.

**1.003.**

“Discriminatory Public Accommodations Practice” shall mean an act that is unlawful under sections 20-134 to 20-136 of this Act.

**1.004.**

“Person” shall include one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees in bankruptcy, or receivers.

**1.005.**

“Commission” shall mean the Nebraska Equal Opportunity Commission.

**1.006.**

The term “Chairman” shall mean the Chairperson of the Nebraska Equal Opportunity Commission; and the term “Commissioner” shall mean any member, including the Chairman, of the Nebraska Equal Opportunity Commission. The Chairman or a majority of the Commission may designate any member of the Commission to serve, in the absence of the Chairman, as Acting Chairman; and in the absence of the Chairman, the Acting Chairman shall have all the duties, powers and authority conferred upon the Chairman by the Act and by these Rules and Regulations.

**1.007.**

The term “Charge” shall mean a written statement under oath, filed with the Commission by any person claiming to be aggrieved, her or his agent, or her or his attorney; setting forth the time, place, and facts of the discriminatory public accommodations practice alleged to have been committed.

**1.008.**

“Respondent” means a person against whom a charge has been filed, or with respect to whom a complaint has been issued.

**1.009.**

“Complainant” means any person claimed to have been aggrieved by a discriminatory public accommodations practice.

**1.010.**

The term “Party” or “Parties” shall mean either the complainant or the respondent, or both.

**1.011.**

The term “Complaint” shall mean a written statement under oath or affirmation, issued by the Commission and served upon a respondent pursuant to a charge, after determination by the Commission that there is a reasonable cause to support the charge and after failure to settle or adjust any such charge by conciliation.

**1.012.**

The term “Executive Director” shall mean an employee of the Commission, selected by and serving at the will of the Commission as Executive Director, who shall have such duties, powers and authority as may be conferred upon her or him by the Commission, subject to the provisions of the Act.

**1.013.**

The term “Hearing Examiner” shall mean a Commissioner or an attorney duly licensed to practice law in the State of Nebraska and shall be appointed by the Commission, as hereinafter provided to conduct a public hearing upon a complaint of a discriminatory public accommodations practice.

**Chapter 2 – Procedure.**

## **2.001. Filing, Amending and Withdrawal of Complaint.**

### **2.001.01. Who May File.**

Any person who claims to have been injured by a discriminatory public accommodations practice may file a charge with the Commission personally or by her or his agent or attorney. The charge shall be in writing and under oath of the person filing.

### **2.001.02. Form.**

A charge shall be filed with the Commission. The charge shall be signed by the complainant or by her or his agent or attorney under oath or affirmation before a notary public or other person duly authorized by law to administer oaths and affirmations. The charge may be filed on forms provided by the Commission, blank copies of which will be supplied by the Commission upon request and will be available at the Commission offices. Notarial service will be without charge by the Commission.

### **2.001.03. Contents.**

A charge shall contain the following:

#### **2.001.03A.**

The full name, address, and telephone number, if any, of the person claiming to be aggrieved.

#### **2.001.03B.**

The full name, address, and telephone number, if known, of the respondent.

#### **2.001.03C.**

A plain and concise statement of the facts alleged to constitute a discriminatory public accommodations practice or practices.

#### **2.001.03D.**

The date and place in the State of Nebraska where the alleged discriminatory public accommodations practice was committed.

#### **2.001.03E.**

A statement as to any other action, if any, civil or criminal, instituted by or on behalf of the complainant in any other forum, based on the same facts as alleged in the charge, together with a statement as to the status or disposition of such other action.

### **2.001.04. Place and Manner of Filing.**

The charge may be filed by personal delivery, ordinary mail, or registered or certified mail, addressed to the office of the Commission in Lincoln or any branch office of the Commission.

**2.001.05. Attorney General's Charge.**

The Attorney General of the State of Nebraska shall, in like manner as the complainant, make, sign, and file such a charge.

**2.001.06. Amendment of Charge.**

Notwithstanding the provisions of 2.001.03 of these Rules and Regulations, a charge may be amended as follows: to cure technical defects or omissions; to clarify and amplify allegations made therein; to allege additional acts which constitute discriminatory public accommodations practice or practices which are related to or growing out of the subject matter of the original charge. All such amendments will relate back to the original filing date. Upon any amendment of a charge, a copy thereof shall promptly be served by the Commission on the respondent by certified or registered mail or through personal service.

**2.001.07. Answer to Charge.**

The respondent may file an answer to the charge at any time prior to the expiration of twenty (20) days after the date she or he receives the charge. The answer shall be sworn to before a notary public. With leave of the Commission an answer may be amended at any time. The Commission will permit answers to be amended whenever it believes it would be reasonable and fair to do so.

**2.001.08. Time of Filing.**

The charge must be filed within ten (10) days from the date of the occurrence of the alleged discriminatory public accommodations practice.

**2.001.09. Withdrawal of Charge.**

A filed charge or any part thereof may be withdrawn, by request in writing by the complainant, and written notice of any such withdrawal shall be sent by the Commission, by registered or certified mail, to all parties who have been previously notified of the charge.

**2.002. Action Upon Charge.**

**2.002.01. Duties of Commission Staff.**

Each charge filed by a complainant, or by her or his agent or attorney, shall be docketed and given a case number, and a copy of said charge shall promptly be served by the Commission on the respondent in person or by registered or certified mail.

### **2.002.02. Investigation.**

The Commission shall institute an investigation by its employees to ascertain all of the facts relating to the alleged discriminatory public accommodations practice or practices set forth in the charge. The staff shall initially solicit information from all parties and utilize interrogatories, depositions, or subpoenas to facilitate a prompt investigation. Interrogatories shall be answered within fifteen (15) days of receipt and the person to whom the interrogatories are directed shall be so informed.

### **2.002.03. Dismissal.**

The report of the investigation shall be presented to the Commission by the Executive Director. The Commission shall dismiss the charge (i) if it is determined that the Commission does not have jurisdiction over the matter; or (ii) if it is determined that there is not reasonable cause to believe that the alleged discriminatory public accommodations practice has been committed; or (iii) if the matter is adjusted and settled during investigation; or (iv) if the complainant has failed to cooperate fully in the investigation of the charge; or (v) if a complaint has been filed with the County Attorney.

No commission employee, during the investigation of a charge, shall propose terms of settlement and adjustment to the respondent's attorney or to the respondent; but, at the request of the respondent's attorney or the respondent, may advise the respondent of possible terms of settlement and adjustment, and shall communicate to the complainant and to the Commission any terms of settlement and adjustment proposed by the respondent. Any terms of settlement arrived at during the investigation shall be submitted to the Commission and the charge shall be dismissed, and the case closed as having been adjusted and settled during investigation.

The Commission shall notify all parties of any dismissal of a charge by personal service or registered or certified mail, which notification shall specify the reason or reasons for dismissal.

### **2.003. Reasonable Cause Findings.**

#### **2.003.01. Conference.**

If the Commission, based upon the report of its investigation by its employees, determines that there is reasonable cause to believe that the alleged unfair employment practice has been committed, the Commission shall appoint a Commissioner or an employee of the Commission to undertake a conciliation conference with the respondent and complainant in order to eliminate the effect of the unfair practice and to prevent repetition thereof.

Both the complainant and the respondent shall be notified of the time and place of a conciliation conference by personal service or registered or certified mail at least ten (10) days prior to the

date set for the conference, and the notice shall advise the parties of the conciliator who will participate in said conciliation conference. The respondent shall appear at the conciliation conference either in person or by attorney, or both. The place of the conference designated by the Commission shall be at a place reasonably convenient for the parties and in the county in which the charge arose. In the event of failure or refusal of the respondent to appear or participate in the conciliation conference, the Commission may issue a written complaint and order a public hearing.

**2.003.02. Non-disclosure.**

The members of the Commission and its staff shall not make public what has occurred in any conciliation conference without the written consent of both parties except evidence concerning endeavors at a conciliation may be made public if a public hearing is ordered.

**2.003.03. Settlement and Order**

**2.003.03A. Settlement Terms Approved by the Commission.**

If a settlement is effected in a conciliation conference, the terms of which are approved by the Commission, the Commission shall have the written terms of settlement and adjustment prepared and signed by the parties; and the Commission shall thereupon enter upon all parties an Order in accord with the executed written terms of settlement and adjustment. Any such Order shall specify the right of the Commission to investigate and determine, at reasonable times, whether the terms of settlement and adjustment and the Order entered pursuant thereto have been or are being complied with. If the Commission determines that the respondent has violated or is violating the terms of settlement and adjustment and the Order entered pursuant thereto, the Commission may issue a written complaint based on the original charge of discrimination and order a public hearing thereon; provided, however, that any such complaint must be issued no later than twenty-four (24) months after Commission approval of the Conciliation Order.

**2.003.03B. Dismissal.**

The Commission may, without the consent of the complainant, dismiss the charge if, in its opinion, matters brought forth in the conciliation conference establish that the respondent has eliminated the effects of the alleged discriminatory public accommodations practice with respect to the complainant or has offered in good faith to eliminate the effects of the alleged discriminatory public accommodations practice with respect to the complainant in such manner as to effectuate the purposes of the Act and complainant has refused to accept such offer.

**2.003.03C. Settlement Terms Not Approved by the Commission.**

If the terms of settlement and adjustment agreed by the parties are not approved by the Commission, the Commission need not enter upon the parties any Order in accord with said

terms of settlement and adjustment, and may close the case as having been settled on terms not approved by the Commission; and in such event, the Commission need not issue a complaint and order a public hearing in the event of an alleged violation of the terms of settlement and adjustment.

**2.003.04. Time Limit and Waiver of Time Limit.**

Except as provided in 2.003.03 of these Rules and Regulations, within ninety (90) days after a Commission ruling of reasonable cause on a charge that has been properly filed with the Commission, the Commission shall make a decision either to issue and serve a complaint or to dismiss the charge. The ninety (90) day time limit may be waived if both parties agree to do so in writing; provided, that even when both parties agree in writing to a waiver of the ninety (90) day time limitation, the Commission may in its discretion anytime after ninety (90) days from its reasonable cause finding determine that conciliation efforts have failed and promptly issue a complaint and notice of public hearing or dismiss the charge.

**2.004. Complaint; Notice of Public Hearing; Answer**

**2.004.01. Issuance and Service of Complaint and Notice of Public Hearing.**

In case of a determination by the Commission of failure to settle or adjust a charge by conciliation or in case of a determination by the Commission that the respondent has violated or is violating the terms of settlement and adjustment reached in a conciliation conference and the Order entered pursuant thereto, the Commission shall promptly issue and serve upon the respondent, by personal service, or by registered or certified mail, a written complaint, under oath or affirmation, together with a notice of public hearing. A copy of such written complaint and notice of public hearing shall at the same time and in the same manner be served upon all other parties.

**2.004.02. Contents of Complaint.**

The complaint shall be signed by any member of the Commission or by the Executive Director, and shall also be signed by the complainant, her or his agent, or her or his attorney, under oath or affirmation, and shall contain:

**2.004.02A.**

An allegation that the charge of an alleged discriminatory public accommodations practice or practices was timely filed with the Commission and properly served upon the respondent.

**2.004.02B.**

An allegation that the respondent committed a discriminatory public accommodations practice or practices, substantially as alleged in the charge filed with the Commission.

**2.004.02C.**

A statement of the relief sought on behalf of the complainant.

**2.004.03. Contents of Notice of Public Hearing.**

The notice of public hearing shall contain:

**2004.03A.**

The name of the Hearing Examiner who shall conduct such hearing; or in lieu thereof, a statement that the public hearing will be conducted by a Hearing Examiner to be designated subsequently by the Commission and that all parties to the proceeding will be notified in writing of the name of the Hearing Examiner so designated at least ten (10) days prior to the date of the public hearing.

**2.004.03B.**

The date and hour of the public hearing, which shall not be less than twenty (20) nor more than sixty (60) days after issuance and service of the complaint.

**2.004.03C.**

The place of hearing, which shall be at a place reasonably convenient for the parties; and in any event shall be in the county where the discriminatory public accommodations practice or practices were alleged to have occurred.

**2.004.03D.**

A statement advising both the complainant and the respondent of her or his right to appear and be represented in such hearing in person and/or by her or his attorney.

**2.004.03E.**

A statement advising the respondent of her or his right to file an answer to the complaint in accordance with these Rules and Regulations.

**2.004.04. Answer.**

The following shall govern with respect to answers to complaints:

**2.004.04A. Time of Filing.**

The respondent may file an answer to the complaint within fifteen (15) days after the date of service of the complaint. Upon application in writing made to the Chairman prior to the end of said fifteen (15) day period, the Chairman may, for good cause shown, extend the time in which the answer may be filed.

**2.004.04B. Place and Manner of Filing.**

The answer shall be filed in duplicate at the office of the Commission in which the original charge was filed, by personal delivery or by certified or registered mail; and at the same time the party filing the answer shall similarly serve a copy of such answer on all other parties and upon the Hearing Examiner if one has been appointed. Proof of service upon the other party or parties and the Hearing Examiner, if one has been appointed shall accompany the copies of the answer filed with the Commission.

**2.004.04C. Form.**

The answer shall be in writing, with the original signed under the oath or affirmation of the respondent or the respondent's attorney, and shall contain (i) the correct name and post office address of the respondent; (ii) the correct name, post office address and telephone number of the respondent's attorney, if respondent is represented by an attorney; (iii) a specific denial of each and every allegation of the complaint controverted by the respondent or a denial of any knowledge or information sufficient to form a belief, or a statement of any matter constituting a defense against any allegation in the complaint.

**2.004.04D. Failure to Deny Allegation.**

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

**2.004.04E. New Matter in Answer.**

Any allegation of new matter contained in the answer shall be deemed denied by the complainant without the necessity of a reply being filed, unless otherwise ordered by the Commission.

**2.004.04F. Failure to File Answer.**

Notwithstanding any failure of the respondent to file an answer, the Hearing Examiner shall conduct the hearing at the time and place specified in the notice of hearing; and it shall be the responsibility of the Hearing Examiner conducting the hearing to attempt to elicit on the record the respondent's answer to each and every allegation contained in the complaint.

**2.004.05. Amendment of Complaint and Answer.**

The following shall govern with respect to the amendment of the complaint and answer:

**2.004.05A. Amendment of Complaint.**

At any time prior to the public hearing, the complainant may, by written request directed to the Commission, or any member thereof, or to the Hearing Examiner if one has been appointed, ask

leave for amendment of the complaint, and shall at the same time specify the particular amendments to the complaint requested by the complainant. Prior to the issuance of any amended complaint hereunder, the Commission, or the member thereof or the Hearing Examiner granting leave to amend, as the case may be shall give to all parties to the proceeding at least three (3) days (exclusive of Saturdays, Sundays, and official State holidays) advance written notice thereof. Copies of any amended complaint shall be filed with the Commission and served on all parties to the proceedings and upon the Hearing Examiner if one has been appointed. During a public hearing, with the consent of the Hearing Examiner, a complaint may be amended to conform to the evidence presented at the hearing.

**2.004.05B. Amendment of Answer.**

At any time prior to the public hearing, the respondent shall have the right to amend the answer to the original or amended complaint, as the case may be, by giving at least three (3) days (exclusive of Saturdays, Sundays and official State holidays) advance written notice to the Commission, or any member of the Commission or to the Hearing Examiner if one has been appointed. Copies of such notice shall be served at the same time on all parties to the proceeding in the manner and form provided for in section 2.004.04 of these Rules and regulations. During a public hearing, with the consent of the Hearing Examiner, an answer may be amended to conform to the evidence presented at the hearing.

**2.004.05C. Form of Amended Complaint and Answer.**

The original of all amended complaints and amended answers shall be in writing under oath or affirmation, and shall conform to and be served in accordance with the requirements of section 2.004 of these Rules and Regulations, except as otherwise provided by this section 2.004.05.

**Chapter 3**

**Public Hearings.**

**3.001. Public Hearings and Consolidation of Proceedings.**

**3.001.01.**

A hearing conducted by a Hearing Examiner hereunder shall be open to the public.

**3.001.02.**

Two or more proceedings against the same respondent arising out of the same set of circumstances, or two or more proceedings by the same complainant against two or more

respondents arising out of the same set of circumstances, may be consolidated by the Commission, in its discretion, for the purposes of public hearing.

### **3.002. Conduct of Hearing.**

#### **3.002.01.**

The hearing shall be conducted by a Hearing Examiner appointed by the Commission.

#### **3.002.02.**

No Commissioner or staff member who participated in the investigation or in any conciliation conference relating to a particular charge shall conduct the public hearing involving said charge.

### **3.003. Powers and Duties of Person Conducting Hearing.**

#### **3.003.01.**

The Hearing Examiner conducting the public hearing shall have full authority to control the procedure of the hearing and, subject to the provisions of the Act, and these Rules and Regulations, shall have full authority to admit or exclude testimony or other evidence.

#### **3.003.02.**

The Hearing Examiner conducting the hearing shall rule upon all motions or objections made by any party after she or he is appointed to conduct said hearing and prior to the issuance of her or his Recommended Order and Decision.

#### **3.003.03.**

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

#### **3.003.04.**

The Hearing Examiner conducting the hearing may exclude from the hearing room or from further participation in the proceedings any person, other than the complainant and respondent, who engages in improper conduct at the hearing. At the request of either party, the Commissioner or Hearing Examiner conducting the hearing shall exclude witnesses from the hearing room.

### **3.004. Testimony and Other Evidence.**

#### **3.004.01.**

All testimony taken at the hearing shall be under oath or affirmation.

**3.004.02.**

All testimony, so far as practicable, shall be subject to the same rules of evidence as are applicable in courts of record in the State of Nebraska.

**3.004.03.**

Testimony or evidence may be given or received in a public hearing concerning endeavors to settle and adjust the alleged discriminatory public accommodations practice by conciliation.

**3.004.04.**

Written stipulations may be introduced in evidence if signed by the attorneys of the parties sought to be bound thereby, or by any party personally if that party is not represented by an attorney. Oral stipulations may be made on the record of any public hearing.

**3.004.05.**

The respondent shall have the right either in person and/or by her or his attorney to be present at the public hearing; to call, examine and cross-examine witnesses; and, subject to the provisions of the Act, and of these Rules and Regulations, to introduce documentary and other evidence into the record of the proceedings.

At the discretion of the Hearing Examiner, the complainant may be allowed to intervene and present testimony in person or by counsel.

**3.004.06.**

The Commission shall arrange for a record of the proceedings in any public hearing to be made, transcribed and filed in the Lincoln office of the Commission. Any such record will be available for examination by the public at reasonable times in the Lincoln office if written request is made at least seventy-two (72) hours (exclusive of Saturdays, Sundays and official State holidays) in advance unless the record has been filed with the court as the result of an appeal proceeding.

**3.005. Motions and Objections.**

**3.005.01. Motions and Objections During Hearing.**

All motions and objections made during a public hearing shall be stated orally on the record and shall, with the rulings on such motions or objections by the Hearing Examiner conducting the hearing, be included in the stenographic transcript of the hearing.

### **3.005.02. Motions Before or After Hearing.**

All motions other than those made during a hearing shall be in writing and shall state briefly the order or relief applied for and the grounds for such motion. Any such motion shall be filed with the Commission and the Hearing Examiner if one has been appointed and a copy thereof shall be served at the same time, personally or by registered or certified mail, by the party making the motion upon the other party or parties. Answering statements, if any, shall be filed in writing with the Commission and the Hearing Examiner if one has been appointed within three (3) days (exclusive of Saturdays, Sundays and official State holidays) after service of the motion upon the party filing the answering statement, and a copy thereof shall be served within the same period upon the other party or parties. All motions shall be decided by the Commission or the Hearing Examiner if one has been appointed without oral argument thereon, unless it is determined by the Commission or the Hearing Examiner that oral arguments will be heard, in which case the parties shall be notified of such fact and of the time and place for such oral argument. The Commission shall arrange for a stenographic transcript, which, together with the written motion and the written answering statement, if any, and the ruling thereon of the Commission or Hearing Examiner conducting the hearing, shall constitute a part of the official record of the proceedings.

### **3.006. Oral Argument and Briefs.**

The Hearing Examiner conducting the hearing shall permit the attorneys of the parties, or any party who is not represented by an attorney, to argue orally before her or him and to file briefs within such time as she or he may determine. Each party filing a brief shall file two (2) copies thereof with the Hearing Examiner conducting the public hearing and shall at the same time serve a copy thereof, personally or by registered or certified mail, on all other parties. No reply briefs may be filed with or will be received by the Hearing Examiner conducting the public hearing.

### **3.007. Settlement Prior to Recommended Order and Decision.**

#### **3.007.01.**

If, after issuance and service of a complaint and notice of public hearing but prior to the close of the public hearing, the complainant and the respondent jointly notify the Commission in writing that they agreed to terms of settlement and adjustment, all of which are set forth in detail in said joint notification to the Commission, the Chairman or Executive Director of the Commission may order a postponement of the scheduled public hearing date, or a recessing of the public hearing if it is already in process.

#### **3.007.02.**

If the terms of settlement and adjustment agreed to by the parties are approved by the Commission, or if said terms as modified by the Commission are agreed to by the parties, the

Commission shall have the written terms of settlement and adjustment prepared and signed by the parties; and the Commission shall thereupon enter upon the parties an Order in accord with the executed written terms of settlement and adjustment. Any such written terms of settlement and adjustment and any Order issued pursuant thereto shall have the same status and effect as any executed written terms of settlement and adjustment and Order entered pursuant thereto under 2.003 of these Rules and Regulations and shall be governed by the provisions of 2.003.03 of these Rules and Regulations, and shall be a matter of public record.

**3.007.03.**

After the Commission has entered upon the parties the Order specified in 3.007.02 of these Rules and Regulations, it shall dismiss the complaint, but subject to the Commission's right to issue a complaint and order a public hearing under 2.004.01 of these Rules and Regulations.

**3.007.04.**

If the terms of settlement and adjustment agreed to by the parties are not approved by the Commission, the Commission need not enter upon the parties any Order in accord with said terms of settlement and adjustment, and may close the case as having been settled on terms not approved by the Commission; and, in such event, the Commission need not issue a complaint and order a public hearing in the event of an alleged violation of said terms of settlement and adjustment.

**3.008. Recommended Order and Decision.**

**3.008.01.**

Following the taking of testimony, the hearing of oral argument and the consideration of briefs, if any, filed by the parties, the Hearing Examiner conducting the public hearing shall have prepared and served upon the Commission and all parties to the proceedings, personally or by registered or certified mail, a written and signed Recommended Order and Decision.

**3.008.02.**

The Recommended Order and Decision shall include:

**3008.02A.**

A summary of the respective contentions of the parties.

**3.008.02B.**

The Hearing Examiner's findings of fact based upon, and limited to, the testimony and other evidence in the record of the public hearing and upon evidence of which judicial notice may be taken by courts of record in the State of Nebraska.

**3.008.02C.**

The Hearing Examiner's determination as to whether or not a preponderance of the evidence sustains the complaint.

**3.008.02D.**

If it is the Hearing Examiner's determination that a preponderance of the evidence does not sustain the complaint, a recommended order of dismissal of the complaint.

**3.008.02E.**

If it is in the Hearing Examiner's determination that preponderance of the evidence does sustain the complaint, a recommended order requiring the respondent to cease and desist from the discriminatory public accommodations practice or practices complained of and to take such affirmative or other actions with respect to the complainant as will eliminate the effect of the discriminatory public accommodations practice or practices complained of, including but not limited to any one or more of the following: the extension of full, equal, and unsegregated accommodations, advantages, facilities and privileges to all persons as in the judgment of the Commission will effectuate the purpose of this Act.

**3.008.02F.**

If any case to which 3.008.02E is applicable, a provision for reasonable reports to the Commission of compliance with the Recommended Order and Decision.

**Chapter 4 – Review by the Commission.**

**4.001. Final Order and Decision of the Commission.**

The Commission shall review the record of the public hearing and the Recommended Order and Decision of the Hearing Examiner. The Commission may affirm or modify in whole or in part the Recommended Order of the Hearing Examiner. If the Commission modifies in whole or in part the Recommended Order and Decision of the Hearing Examiner, it shall write its Final Order and Decision from the record of the public hearing and upon evidence of which judicial notice may be taken by courts of record in the State of Nebraska.

**4.002. Notification and Public Inspection.**

A copy of the Final Order and Decision of the Commission shall be filed in writing at the principal office of the Commission and all parties shall be notified by the Commission, by personal service or registered or certified mail of the Final Order and Decision of the

Commission. A copy of the Final Order and Decision shall be available for public inspection during regular hours at the principal office of the Commission.

#### **4.003. Reopening of Proceedings.**

The Commission, upon its own motion or upon application of any party or intervener, whenever justice so requires, may at any time before it issues its Final Order and Decision reopen any public hearing upon written notice by personal delivery or registered or certified mail to all parties and interveners. An application to reopen the public hearing shall be in writing and shall state the grounds upon which it is founded. The Commission may either grant or deny such application.

### **Chapter 5 – Subpoenas; Depositions; Oaths and Affirmations.**

#### **5.001. Subpoenas.**

##### **5.001.01. Issuance of Subpoena.**

Upon written application served on the Chairman of the Commission, either personally or by registered or certified mail, the Chairman of the Commission shall issue a subpoena on a form prescribed by the Commission, at the instance of the Commission, or the Hearing Examiner conducting a public hearing, or at the instance of any party to the proceedings whenever necessary to compel the attendance of a witness or to require the production for examination of any books, payrolls, records, correspondence, documents, papers or other evidence in any investigation of any alleged discriminatory public accommodations practice or in any hearing before a Hearing Examiner. Blank copies of the subpoena form may be obtained at the office of the Commission.

##### **5.001.02. Petition to Revoke Subpoena.**

Within five (5) days (excluding Saturdays, Sundays and official State holidays) after the service of a subpoena on any person, including the Chairman or any Commissioner, requiring the attendance of said person as a witness at an investigation or hearing, or requiring the production of any evidence in her or his possession or under her or his control, such person may petition the Commission in writing, personally or by registered or certified mail to revoke the subpoena. The Commission shall revoke such subpoena, if, in its opinion, the attendance of the person subpoenaed or the evidence, the production of which is required, does not relate to any matter under investigation or to any matter in question in such proceedings before the Commission or a Hearing Examiner, or, if in its opinion, such subpoena does not describe with sufficient particularity the reasons requiring the attendance of a person as a witness, or the evidence, the

production of which is required. If the chairman or any Commissioner has been served with a subpoena and petitions the Commission to revoke such subpoena, then the Chairman or Commissioner so served shall not participate in the decision of the Commission with respect to which such petition is to be presented.

**5.002. Witness and Mileage Fees.**

Where a subpoena is applied for and issued at the instance of a party to the proceedings other than the Commission, then the cost of service and witness and mileage fees shall be borne by the party at whose instance it has been requested and issued. Where a subpoena is applied for and issued at the instance of the Commission, in pursuance of an investigation or the presentation of evidence relating to a pending complaint, then the cost of such service and witness and mileage fees shall be borne by the Commission. Such witness and mileage fees shall be the same as are paid witnesses in the District Courts of the State of Nebraska.

**5.003.**

The testimony or deposition of any witness who resides outside the State of Nebraska, or who because of illness or any other reason is unable to testify in an investigation or in a hearing before a Hearing Examiner, may be taken within or without the State of Nebraska in the same manner as provided for in civil cases under the applicable law or laws of the State of Nebraska, as now in effect or hereafter amended. The transcript of any such testimony or deposition, when duly authenticated and filed with the Commission in any investigation or public hearing, shall constitute a part of the official record of the case.

**5.004. Oaths and Affirmations.**

Any Commission conducting a public hearing may administer oaths or affirmations.

**Chapter 6 – Service.**

**6.001. Manner of Service.**

Complaints, orders and other process and proper papers may be served personally or by registered or certified mail, unless otherwise allowed by the Act and by these Rules and Regulations, in which event, service may be made by ordinary first-class mail, postage pre-paid.

**6.002. Proof of Service.**

Proof of service, where required by the Act, or by these Rules and Regulations, shall consist of either the verified return of the individual who made service, which return shall set forth the manner of such service or the return receipt from service by certified or registered mail.

**6.003. Service on Parties' Attorneys.**

The attorney representing any party in any proceedings under the Act shall file her or his appearance with the Commission, and thereafter all notices, orders and other documents served by the Commission shall be served upon said attorney instead of upon the party she or he represents, until said attorney or said party notifies the Commission in writing that said attorney no longer represents or is authorized to represent said party.

**Chapter 7 – Judicial Review or Enforcement.**

**7.001. Certification of Commission Records.**

For the purpose of any proceeding for judicial review or judicial enforcement under Section 20-142 of the Act, the Chairman shall be authorized to certify all documents and records that are part of the official files and records of the Commission.

**7.002. Use of Commission's Copy of Transcript.**

**7.002.01.**

The Commission's copy of the transcript of evidence made in a public hearing or in the reopening of a proceeding, shall be available for examination during regular office hours at the Commission's Lincoln office to any party without cost under the same conditions established by 3.004.06 of these Rules and Regulations.

**7.002.02.**

The Commission's copy of the transcript of evidence made in a public hearing or in the reopening of a public hearing shall be available to be certified and used as part of the record in any proceeding for judicial review or judicial enforcement of a Final Order and Decision of the Commission.

**Chapter 8 – Hearing Examiners.**

**8.001. Selection and Qualifications.**

Hearing Examiners to conduct public hearings upon a complaint of a discriminatory public accommodations practice or practices shall be selected by the commission pursuant to such standards and methods for selection as the Commission may determine.

**8.002. Compensation.**

Hearing Examiners shall be reimbursed by the Commission for their expenses necessitated by conducting such hearings.

**8.003. Disqualifications.**

Any Hearing Examiner may, after being designated by the Commission to conduct a public hearing upon a particular complaint, disqualify herself or himself from conducting such public hearing, by written request to the Commission stating that she or he feels unable to conduct a fair hearing; and upon receipt of such written request, the Commission shall select another Hearing Examiner to conduct the public hearing on said particular complaint, and shall promptly advise all parties, by registered or certified mail, of the name of the person so selected as Hearing Examiner.

**Chapter 9 – Construction of Rules and Regulations.**

These rules and regulations shall be construed to effectuate the purposes of the Act, and the public policy of the State of Nebraska as expressed in the Act, and shall not be construed or applied in a manner inconsistent with the provisions of the Act.

**Chapter 10 – Availability of Rules and Regulations.**

The Rules and Regulations of the commission shall be available to the public at the offices of the Commission.

**Chapter 11 – Adoption, Amendment and Recision.****11.001. Effective Date.**

These Rules and Regulations shall become effective five (5) days after the filing of a certified copy thereof with the Revisor of Regulations of the State of Nebraska.

**11.002. Adoption, Amendment and Recision.**

The Commission may adopt, amend or rescind any Rule or Regulation not inconsistent with the provisions of the Act at a regular or special meeting of the Commission, provided that at least a quorum of the Commission is present at such meeting and that written notice of the proposed adoption, amendment or rescission has been given to all members of the Commission at least five (5) days before the meeting at which such action is to be taken and provided further that the Nebraska Rules of Administrative Agencies sections 84-901 to 84-910 have been satisfied. Any Rule or Regulation so adopted, amended or rescinded shall become effective five (5) days after filing of a certified copy thereof with the Revisor of Regulations of the State of Nebraska.

**11.003. Rules; Petition for Promulgation, Amendment or Repeal.**

Any interested person may petition the Commission requesting the promulgation, amendment or repeal of any rule. Such petition shall be in writing and signed by the petitioner or petitioners and shall clearly state the rule or amendment desired, if such be the case. The petition shall further state the grounds urged in support of the requested promulgation, amendment or repeal. If, in the judgment of the Commission, it should appear that the requested rule, amendment or repeal would serve no useful or beneficial purpose, the Commission may reject the same with or without having first afforded the petitioner a hearing.

**Chapter 12 – Declaration of Validity.**

If any article of this Act or any part of any section shall be declared invalid or unconstitutional, such declaration of invalidity shall not affect the validity of the remaining portions thereof.