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BEFORE THE STATE OF INDIANA

CIVIL RIGHTS COMMISSION

- - -

PUBLIC MEETING OF JULY 27, 2018

- - -

PROCEEDINGS

in the above-captioned matter, before the Indiana
Civil Rights Commission, Holli Harrington,
Chairperson, taken before me, Lindy L. Meyer,
Jr., a Notary Public in and for the State of
Indiana, County of Shelby, at the Indiana
Government Center North, 100 North Senate Avenue,
Room N300, Indianapolis, Indiana, on Friday,
July 27, 2018 at 1:01 o'clock p.m.

- - -

CRC 7-27-18

21 William F. Daniels, RPR/CP CM d/b/a
ACCURATE REPORTING OF INDIANA
22 12922 Brighton Avenue
Carmel, Indiana 46032
23 (317) 848-0088

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1 APPEARANCES:

2 COMMISSION MEMBERS:

3
4 Holli Harrington, Chairperson
Sheryl Edwards (via telephone)
Alpha Blackburn
5 Steven A. Ramos
James W. Jackson

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7 INDIANA CIVIL RIGHTS COMMISSION
By Gregory Wilson, Director
8 & Doneisha Posey, Deputy Director
Indiana Government Center North
9 100 North Senate Avenue, Room N300
Indianapolis, Indiana 46204
10 On behalf of the Commission.

11

OTHER COMMISSION STAFF PRESENT:

12

13 John Burkhardt
Caroline Stephens Ryker
Tatiana Foote
14 Leah Ross
Frederick S. Bremer
15 Anehita Eromosele

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1 1:01 o'clock p.m.
2 July 27, 2018

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3 CHAIRPERSON HARRINGTON: It is
4 1:00 o'clock, and at this time I would like to
5 call the Indiana Civil Rights Commission meeting
6 to order on July 27th, 2018. We do have a
7 quorum, and it includes -- one of the
8 Commissioners is participating via call, so
9 unfortunately, I have to remind everyone that
10 requires that all votes we have to do by roll
11 call, so I will follow that process, and I ask
12 for all of your patience.

13 With that, I would like the AL Judge to do
14 the announcement of the agenda.

15 JUDGE BURKHARDT: Okay. Well, thank

16 you very much. It's good to be with you here
17 today. Thank you, everyone, for prioritizing the
18 rescheduling of this meeting to be this month and
19 move cases forward.

20 So, on the agenda we have one
21 Commissioners appeal decision to be recorded
22 today. It's an Old Business appeal assigned last
23 time, and that can be reported today. We have a

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1 number of New Business appeals, those which have
2 been recently received and to which Commissioners
3 have already been appointed in fact by Chair
4 Slash, and those can be read into the record
5 today.

6 Then thirdly, we have oral arguments on a
7 housing matter. Those have a number of
8 associated documents which have been located in
9 SharePoint for your review, and in fact there
10 will be argument here today on that, followed by
11 some routine matters, Announcements, and Public
12 Comment.

13 CHAIRPERSON HARRINGTON: Okay. So,

14 the first order of business is approval of
15 previous meeting minutes. Has everyone had
16 opportunity to review those through the
17 SharePoint site?

18 COMM. RAMOS: (Nodded head yes.)

19 CHAIRPERSON HARRINGTON: Are there
20 any questions or changes to the meeting minutes?

21 (No response.)

22 CHAIRPERSON HARRINGTON: Hearing
23 none, can I get a motion to approve the minutes?

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1 COMM. RAMOS: So moved.

2 COMM. BLACKBURN: So moved.

3 CHAIRPERSON HARRINGTON: And a
4 second?

5 COMM. BLACKBURN: Second.

6 COMM. JACKSON: Second.

7 CHAIRPERSON HARRINGTON: Okay. It's
8 been properly moved and seconded, so I will take
9 a vote by roll call to approve the meeting
10 minutes. I will start with Comm. Edwards on the

11 phone.

12 COMM. EDWARDS: Aye.

13 CHAIRPERSON HARRINGTON: Aye.

14 Comm. Jackson?

15 COMM. JACKSON: Yes.

16 CHAIRPERSON HARRINGTON: I approve as

17 Comm. Harrington.

18 Comm. Blackburn?

19 COMM. BLACKBURN: Aye.

20 CHAIRPERSON HARRINGTON: And

21 Comm. Ramos?

22 COMM. RAMOS: Aye.

23 CHAIRPERSON HARRINGTON: All right.

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1 The minutes have been properly approved.

2 The next order of business is the

3 Director's Report.

4 MR. WILSON: Good morning,

5 Commissioners.

6 CHAIRPERSON HARRINGTON: Good

7 morning.

8 COMM. BLACKBURN: Good morning.

9 MR. WILSON: Comm. Edwards?

10 COMM. EDWARDS: Good afternoon.

11 MR. WILSON: Good afternoon. Kind of
12 close.

13 Again, I want to say Commissioner,
14 Vice-Chair Harrington, Happy Birthday week.

15 CHAIRPERSON HARRINGTON: Thank you.

16 MR. WILSON: So, a couple of things.
17 Again, we don't have our At-a-Glance, but I'm
18 just going to go over some of the things that
19 we're focused on right now. One is we still are
20 doing the remote intake. That's where we're
21 going to the community and we actually allow
22 people to come in and file their claims in the
23 community. We just did the library on East



1 Washington Street.

2 We think it's very important. We have
3 been getting claims, and the thing that's great
4 about it is we get the signature right there that
5 allows us to move forward versus even when they

6 have to come up here, or even when they call or
7 we take it over the phone, we still have to send
8 the document out and try to get those signatures.
9 Sometimes we can, sometimes we can't. So, we
10 think this is good as far as our community
11 engagement program, and people tend to like it.
12 We get a lot of positive feedback.

13 We're on the radio here in Indianapolis as
14 well as Northwest Indiana. We have partnerships
15 around the state that we have redeveloped. For
16 instance, we're working with Valpo and Goshen and
17 La Porte to try to help them with their programs
18 there. So, we're excited about that as well.

19 Last month -- excuse me. This month we
20 were at the Indiana Black Expo, where we did our
21 Commission with the Educators on Cultural
22 Diversity, and we thought that went very well.
23 We had a lot of positive feedback. What that

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1 entailed was our different Commissions, the
2 Latino Commission, the Women's Commission, the
3 Native American Commission, and then the -- which

4 one did I miss?

5 MS. POSEY: Social Status of --

6 MR. WILSON: Social Status of Black
7 Males. And then also, our Administrative Law
8 Judge, John Burkhardt, he kind of talked about
9 cultural differences to the educators. It was a
10 packed room. As I said, it went over very well.

11 What we're doing tonight, even tonight, we
12 have our Civil Rights Night at the -- with the
13 Indians, and we're going to be honoring a
14 gentleman named Bobo Smalls. He actually played
15 for the Indianapolis Clowns for 22 years. He has
16 never really been honored in this city or been
17 recognized in this city, and he's very excited
18 that he is being remembered tonight.

19 I mean if you go look up some of his
20 history, again, for those that don't know, the
21 Indianapolis Clowns were part of the Negro
22 Baseball League, and the Clowns actually like
23 were the entertainment side, like the Harlem

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1 Globetrotters.

2 One thing I'll just share about him, I
3 mean he couldn't make it in the Major Leagues,
4 the National Baseball League, but this was a guy
5 who threw with his left hand a 97-miles-per-hour
6 ball, and then he also could take four balls with
7 one hand, his left hand, and throw to four
8 different hitters at once.

9 COMM. BLACKBURN: No.

10 MR. WILSON: Yes. And that is
11 incredible. And so, it's an incredible honor.

12 COMM. BLACKBURN: Wow.

13 MR. WILSON: It's an incredible honor
14 to allow him to take the first pitch, you know,
15 that they offered me. We'd rather honor him with
16 those things, and it definitely is an honor to be
17 a part of that.

18 So, we have our Region V Conference coming
19 up in October. We're working pretty hard on
20 that. We -- again, we have a special guest from
21 HUD coming in, and I just want to put it on the
22 record, but we have a special guest coming in
23 from HUD, and it's going to be at the Sheraton.

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1 It's October the 10th through the 12th, and it'll
2 be three days of training, and we're excited
3 about that. So, you'll get more information as
4 we go forth.

5 We've done a lot this year. I think you
6 know that. We've been very active, very busy.
7 One of the things I enjoy, too, is the fact that
8 Judge Burkhardt has been getting these old cases
9 closed out, and you'll see a lot of them come
10 through.

11 I think by the end of this year, based on
12 the target that myself and Judge Burkhardt set,
13 we'll have those old cases -- anything before
14 2016 will be off the books. And so, that is
15 incredible considering how long they've been
16 sitting on the books, so I want to commend Judge
17 Burkhardt for putting together that plan and
18 helping me as we try to make sure that we clean
19 up all of the backlog.

20 And I just want -- I know Doneisha has
21 probably mentioned a couple of things about the
22 great response we've had from our partners at

23 EEOC and HUD. They like what we've been doing as

11

1 far as how we've been delivering on our cases,
2 how we have not had these aged cases that we've
3 had in the past.

4 So, it's just a lot of great things that
5 are happening here in the agency, a lot of
6 success, and like anybody else, I don't like
7 backlog, and we're not like that anymore. And
8 so, I just commend this agency for the hard work.
9 We still have some staffing changes and
10 adjustments, but we feel pretty comfortable where
11 we are right now.

12 And so, I don't know -- Deputy Director,
13 do you want to mention a couple of things
14 about --

15 MS. POSEY: Sure.

16 MR. WILSON: -- the deliverables that
17 we've done with our --

18 MS. POSEY: Yes.

19 MR. WILSON: -- partners at HUD and

20 EEOC?

21 MS. POSEY: Yes.

22 So, good afternoon, Commissioners.

23 CHAIRPERSON HARRINGTON: Good

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12

1 afternoon.

2 COMM. RAMOS: Good afternoon.

3 MS. POSEY: Our HUD contract, we have
4 a work-share agreement with HUD. Many of our
5 housing cases are duly filed with HUD, and within
6 that contract, the fiscal year ended June 30th,
7 2018 for this past fiscal year, and I'm pleased
8 to announce that we closed 162 cases with HUD,
9 and that is a huge improvement from the past.
10 The year before, we were at, I want to say, 134.
11 It might not seem like that many cases, but it
12 really is a lot of cases, especially when it
13 comes to our housing cases.

14 So, I just really want to commend our
15 staff for stepping up to the plate and getting so
16 many more cases completed this year. So, I'm
17 really excited about that. HUD is very excited

18 about that. We are down to zero percent age in
19 housing --

20 MR. WILSON: Uh-huh.

21 MS. POSEY: -- investigations, zero
22 percent, whereas before, it could be anywhere up
23 to 30 percent of our cases are outside of our

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1 100-day investigation time period. So, as of
2 right now, all of our cases, all of our housing
3 cases, none of them are aged.

4 So, I'm really excited about that, and
5 that's really due to new policies and procedures
6 that we've put into place, new staff that have
7 come on and really taken, you know, dynamic roles
8 within our agency, and just overall culture in
9 our agency and morale being very high in
10 enforcement.

11 Also, with the EEOC, that contract will
12 not be -- or that fiscal year is not over until
13 September 30th, 2018 with our EEOC counterparts,
14 but I will also just add that last year, we -- we

15 took a big step with EEOC and asked for a huge
16 upward modification of cases to complete with
17 them.

18 Typically we would submit about 200, 250
19 cases per year to EEOC. Last year, we asked for
20 400 additional cases that we would submit, and we
21 did, we finished them all, and it was wonderful.
22 And this year we are right on target to do 388
23 cases, that's what we asked for this year.



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1 So, last year was the year of cleaning out
2 that backlog of cases that were just sitting and
3 pending to being as close to real time as
4 possible. It's not 100 percent possible for us
5 to have that, but we are very close to all of our
6 cases being, at least in employment, 2017 and --
7 you know, 2017 and 2018 cases.

8 So, anything before that, if anybody filed
9 a case with ICRC in 2016 or before, all of those
10 cases in employment are adjudicated at some
11 level, whether we found no cause and it was done,
12 or whether we found cause and it's now in

13 litigation or it was settled at some point. So,
14 I'm really happy with our progress, really happy
15 with our staff really stepping up and helping us
16 get these cases out of the door.

17 I'm really happy with all of the training
18 that our staff is able to go to. We've put on
19 trainings. We're just in a great place right now
20 in terms of operations of our agency, so --

21 MR. WILSON: And so, I would just say
22 the fact when you have your partners tell you
23 they don't question when you say you want more --

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1 to add additional cases -- last year, they were
2 saying, "Are you sure?" I mean they didn't have
3 the confidence in us to do that, and that's just
4 based, you know, on what has happened in the
5 past. But now, this, year, when we say
6 something, there's no doubt, they have no
7 question about it. So, yeah, that definitely is
8 a feel-good moment when you know that your work
9 means something.

10 And so, that's what we've done. We went
11 back, we revisited things that we needed to
12 improve on, and we did that. So, I will say
13 overall, as the ICRC, as the Commission, we have
14 really moved ourselves forward a lot. So, that's
15 kind of where we are right now. Questions?

16 COMM. RAMOS: Yeah, a question. So,
17 the 388, do you have any idea of what percentage
18 that is of the overall outlying case loads from
19 the EEOC, or is that -- is that a hundred percent
20 of them or five percent of them? I'm just trying
21 to get a perspective.

22 MS. POSEY: Oh, that's a good
23 question. I really don't have any idea with

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1 that. So, what EEOC does is they have their own
2 caseload of the cases that they investigate, but
3 with the different FEPA partners, which we're
4 called the FEPA around the nation. Cases are
5 duly filed with both the EEOC and a local FEPA.

6 So, EEOC keeps track of how many cases in
7 total that they do, you know, hundreds of

8 thousands; right? But not all of them are
9 investigated by them. They'd be investigated by
10 a local FEPA as well. So, it's really hard, but
11 that is a question that I asked our state and
12 local program coordinator, and he is working with
13 some data analyst in D.C. that works with kind of
14 all the -- it's called Hyperion --

15 CHAIRPERSON HARRINGTON: Uh-huh.

16 MS. POSEY: -- you know what I'm
17 talking about -- to create a report for us, an
18 annual report of Indiana in general, not just our
19 agency, but the other local FEPA's. I want to
20 say there are seven FEPA's in the State of
21 Indiana that also have dual filed cases with
22 EEOC, so we can have a better idea of what
23 Indiana looks like.

17

1 COMM. RAMOS: Uh-huh.

2 MS. POSEY: -- as a whole and not
3 just our agency.

4 COMM. RAMOS: And trends as well.

5 MS. POSEY: Yes.

6 MR. WILSON: But what the 388
7 represents, though, is our contractual
8 obligation --

9 MS. POSEY: Uh-huh.

10 MR. WILSON: -- to them, so --

11 CHAIRPERSON HARRINGTON: Can I ask a
12 follow-up question? With the 388, is there an
13 opportunity for you to do more if you finish, and
14 so it's two parts?

15 MS. POSEY: Uh-huh.

16 CHAIRPERSON HARRINGTON: And then the
17 other pieces, that's a set number? I'm assuming
18 there are cases that are out there beyond that.
19 So, if they don't come to you, do they just sit
20 till the next year, or do they go to another
21 organization and --

22 MS. POSEY: Those are great
23 questions. So, at the beginning of the contract

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1 year, they ask us to project how many cases that
2 we would like to do for that contract year. So,

3 at the beginning of last contract year, we said,
4 "388," and that was based off of how many cases
5 we received each month versus how many cases were
6 completed each month and kind of calculated how
7 many we think -- we thought that we could do for
8 the year. Three eighty-eight was the number that
9 we came up with. So, we are a couple of months
10 before the end of this contract year, and they
11 came to us and said, "Hey, you told us at the
12 beginning of the year 388. Is that too many? Do
13 you want to go down, or is that not enough? Do
14 you want to go up?"

15 And so, at that point we looked at kind of
16 how much we've done so far versus how much time
17 we have left and how many do we think we could
18 still do, and 388 was still kind of the number
19 right on the money for us.

20 CHAIRPERSON HARRINGTON: Okay.

21 MS. POSEY: But we had the
22 opportunity to say we wanted more or we wanted
23 less, and we were good.

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1 CHAIRPERSON HARRINGTON: Okay.

2 COMM. RAMOS: One -- and maybe not
3 all of the Commissioners know, but you're funded
4 for each one of these cases that you do. This is
5 part of the resources that help --

6 MS. POSEY: Exactly.

7 COMM. RAMOS: -- cover what you do.

8 MS. POSEY: Yeah. We couldn't do
9 what we do without our federal partners.

10 MR. WILSON: Right. And the thing is
11 we try to make sure that we're going to deliver
12 what we can deliver.

13 COMM. RAMOS: Sure.

14 MR. WILSON: And that's important for
15 us, especially based on the past. I mean with
16 me, everything's data driven here. We make sure
17 we review what we're doing each month, because we
18 do not want to put out numbers that we cannot
19 deliver.

20 MS. POSEY: Uh-huh.

21 MR. WILSON: So, when we say 388, we
22 talked last year the fact that we know we're
23 right on the point, and if -- at any time in the



1 future when we look, we're going to always give
2 them exactly what we think we're capable of
3 doing. So, yeah, we're pretty comfortable with
4 those numbers. And it is -- these are big
5 revenue generators, so --

6 CHAIRPERSON HARRINGTON: So, the
7 second part is: If you --

8 MS. POSEY: Oh.

9 CHAIRPERSON HARRINGTON: -- the
10 beyond, so if the cases that are out there beyond
11 the 388, are they just in a queue waiting for the
12 next fiscal year, or are other agencies able --

13 MS. POSEY: Right.

14 CHAIRPERSON HARRINGTON: -- to
15 request them?

16 MS. POSEY: So, typically -- so, this
17 is kind of what happened in the past. We had a
18 contractual obligation of, say, 250, but if we
19 didn't submit all -- or if we had more than
20 the 250 that weren't submitted to EEOC --

21 CHAIRPERSON HARRINGTON: Uh-huh.

22 MS. POSEY: -- we kind of left them
23 in the hopper, and that's why we had so many just

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1 waiting. So, we cleared all those cases out.
2 That's why we asked for that upward modification
3 last year, to get all of those resolved, and we
4 no longer have any just waiting. But if in the
5 event that we get to the end and we are above
6 the 388, it'll be added to our next year's
7 contract.

8 MR. WILSON: But there's no backlog,
9 like they're sitting.

10 MS. POSEY: Yes.

11 CHAIRPERSON HARRINGTON: Okay.

12 MR. WILSON: That's what we did at
13 the beginning of last year. I think I told the
14 Commission last year one of my first things was
15 as Director, we clean up this backlog and turn
16 everything in so we started fresh.

17 MS. POSEY: Yeah.

18 CHAIRPERSON HARRINGTON: Okay.

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19 MR. WILSON: Yeah.

20 CHAIRPERSON HARRINGTON: Any other
21 questions?

22 (No response.)

23 CHAIRPERSON HARRINGTON: Any other

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1 staff reports?

2 MR. WILSON: No, I just -- again,
3 we're just excited about what we're doing, how
4 we're getting things done, and again, when you
5 have these partnerships, the thing for me is you
6 want to make sure your partners believe and trust
7 in what you're doing, and I think that's where we
8 are right now.

9 That's why this Region V Conference is
10 important for us, too. We tried -- they tried --
11 somebody tried it before, and wasn't able to
12 successfully deliver on it, and so, we want to
13 make sure everything we do, we're successful.

14 CHAIRPERSON HARRINGTON: Okay. All
15 right.

16 MR. WILSON: Thank you.

17 COMM. RAMOS: A question.

18 CHAIRPERSON HARRINGTON: Uh-huh.

19 COMM. RAMOS: It's such a change, but
20 you just completed the Black Expo, and that
21 appeared to be very successful event, and
22 comments or feedback?

23 MR. WILSON: Yeah. We had our booth

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1 there. I mean it was very interactive. Again,
2 our whole -- whole point is community engagement.
3 I mean we're involved in the Education
4 Conference. We had the CLE's that the Deputy
5 Director did where --

6 CHAIRPERSON HARRINGTON: The CLE's?

7 MS. POSEY: Uh-huh. I -- I did a
8 continuing legal education conference. It was
9 called the ABC's of Education Determination.

10 CHAIRPERSON HARRINGTON: Okay.

11 MR. WILSON: Yeah. But Doneisha's
12 actually put together a program that we do. What
13 do we do; how many a year?

14 MS. POSEY: Right now we're doing
15 five CLE's a year across the state. Our next CLE
16 will be in Bloomington, Indiana in September, and
17 that'll be on public accommodation
18 discrimination. So, we just want to make sure
19 that attorneys around the state, whether you're
20 an attorney, a law student, or just anyone
21 interested in knowing more about the law, that
22 they are adequately, you know, learning about our
23 law, so that if they are practicing in this area,

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1 that they know that we're resourcing and where to
2 find the law.

3 MR. WILSON: And the one big thing I
4 did forget, too, is that we're going to be at the
5 State Fair. It's the first time we've ever done
6 an event like this, so from start to finish we'll
7 be there, and one thing we thought is, again,
8 it's a statewide event, so it means an
9 opportunity to touch a lot more people.

10 And we will be able to do -- actually
11 people can file their claims right then at the

12 Fair. We have a place set up, which is private,
13 so they still can file claims there, we can still
14 process them. So, that's new, something
15 different.

16 I told you we were going to be very
17 aggressive in serving, and I think that's what
18 we've done, and I'm sure over the years,
19 Comm. Blackburn, you can tell that we're doing
20 some very aggressive things based on your
21 experience here at the Commission.

22 COMM. BLACKBURN: It's going to be
23 terrific to see you there.

25

1 MR. WILSON: Yeah.

2 COMM. RAMOS: It's not next to the
3 funnel cakes; right?

4 MR. WILSON: No, it's not.

5 MS. POSEY: That's probably the best
6 place to be. We could get all of the --

7 COMM. RAMOS: Yeah.

8 MS. POSEY: -- people coming up.

9 MR. WILSON: But staff is excited. I
10 mean, again, all of the staff gets to get out
11 into the community and not be just in this
12 building, in this room. And so, it's just not
13 one or two particular people, it's our whole
14 staff at points will be working at that Fair
15 booth, so that's different, too. And we want
16 them -- I want them to be more engaged and out
17 there, so they're excited about it.

18 CHAIRPERSON HARRINGTON: It's
19 exciting. If you could, would you be able to
20 share the hours? Because --

21 MR. WILSON: Yeah.

22 CHAIRPERSON HARRINGTON: -- I'm sure
23 many of us will venture, obviously, to the Fair,

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1 and if we're there, we could come.

2 MS. POSEY: 10:00 a.m. to 9:00 p.m.
3 August 3rd through August 20th.

4 MR. WILSON: In the Exposition --

5 CHAIRPERSON HARRINGTON: 10:00
6 to 9:00?

7 MS. POSEY: Yes, yes, ma'am.

8 MR. WILSON: In the Exposition Hall.

9 MS. POSEY: And we'll be there.

10 COMM. RAMOS: What about the budget?

11 MR. WILSON: It's inside. No, we
12 negotiated with our partners and worked out a
13 great deal.

14 COMM. RAMOS: Okay.

15 MS. POSEY: I mean Cindy Hoyt at the
16 Fair is a great partner, and so, we worked out a
17 great deal for us.

18 COMM. RAMOS: Great.

19 MR. WILSON: It's not that costly.
20 The thing is for us is just being out there, and
21 we're still --

22 COMM. RAMOS: Sure.

23 MR. WILSON: -- able to do some work,

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1 so we'll have laptops and things out there.

2 CHAIRPERSON HARRINGTON: Now, is
3 there any plan for any kind of social media

4 campaign so people know that you're there?

5 MR. WILSON: Yeah, uh-huh.

6 CHAIRPERSON HARRINGTON: Okay.

7 MR. WILSON: Oh, yeah, very

8 aggressive.

9 CHAIRPERSON HARRINGTON: Okay. And I
10 don't know if all of us are connected, but we
11 might be able to push out as well. But no, it
12 is -- it's exciting to see you out in the
13 community, so if there is anything that you need
14 from us collectively --

15 MR. WILSON: Thank you.

16 CHAIRPERSON HARRINGTON: -- because I
17 know we represent different parts of the
18 community, so we can advocate on your behalf.

19 MR. WILSON: Well, John will make
20 sure you get that information. We'll send it
21 out. The good thing, too, is I -- when I worked
22 with the Governor when he was Lieutenant Governor
23 and I worked with the six agencies that were

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1 under the Governor, that's one thing that they

2 did well, when they did the Fair, they were very
3 successful in connecting with people, and so I
4 thought we could do the same thing.

5 This will be our first year. We'll look
6 at it, we'll see how it works, think about it,
7 and as me and staff talked about, if it works,
8 great, we'll do it again; if it doesn't work the
9 way we want it to, we don't see the results, then
10 we'll do something else.

11 MS. POSEY: I'm going to call Sheryl
12 Edwards back in. It hung up for some reason.

13 MR. WILSON: Oh, I'm sorry.

14 MS. POSEY: Uh-huh.

15 MR. WILSON: Any other questions?

16 (No response.)

17 MR. WILSON: Thank you so much.

18 CHAIRPERSON HARRINGTON: All right.

19 Thank you for your report, and again, we
20 acknowledge and we appreciate all that the staff
21 does to fulfill the missions of the Commission
22 and the aggressive nature that you guys --

23 COMM. EDWARDS: Hi, this is --



1 CHAIRPERSON HARRINGTON: -- have
2 undertaken collectively --

3 COMM. EDWARDS: -- Comm. Edwards
4 again.

5 CHAIRPERSON HARRINGTON: -- to work
6 and move forward.

7 MR. WILSON: I'm going to have to
8 tell you one more --

9 MS. POSEY: Thank you.

10 MR. WILSON: -- thing, too, and this
11 is the first time all of our -- the Commissions
12 that are under us now all have active budgets.
13 They've all put together an active budget, and
14 that's not happened that way before, and that's
15 because Pam Cook, who is our CFO, has really
16 helped to work to make sure that our finances are
17 in order and all of our processes are working.
18 So, I mean I'm also excited about that. We have
19 some real strong talent here.

20 CHAIRPERSON HARRINGTON: Awesome.

21 All right. Any other questions?

22 (No response.)

CHAIRPERSON HARRINGTON: All right.



1 Then you --

2 MR. WILSON: Thank you.

3 CHAIRPERSON HARRINGTON: -- brought
4 one thing to mind is, from the State Fair, I'd
5 be -- and I think the other Commissioners -- let
6 us know what the uptake is and the number of
7 claims you've gotten, in the sense that you guys
8 felt that it was a value add, if there are other
9 similar events that you might be able to
10 participate in, is that a win for that duration
11 of time?

12 MR. WILSON: Yeah, no doubt.

13 MS. POSEY: Uh-huh.

14 CHAIRPERSON HARRINGTON: All righty.

15 Well, again, I want to commend everyone.

16 The next order of business are our -- the
17 Commissioners have been appointed appeals to
18 report for today. We only have one, which was
19 with Comm. Ramos.

20 Would you share your findings?

21 COMM. RAMOS: Madam Vice-Chair, so in
22 the case of Vassil Marinov and United Auto
23 Workers, I'm going to request some additional

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1 time on that. There is some confusion in the
2 materials that I have, so I need some additional
3 time to complete that for the next meeting.

4 CHAIRPERSON HARRINGTON: Okay. So,
5 for the record, we'll note that case, which is
6 with the -- EMre17081214 will be -- he's
7 requested additional time, and we will take a
8 look at that at our next meeting.

9 All right. We've got New Business. I met
10 with the ALJ before this session, and the Chair
11 actually met with him and -- at least virtually,
12 and made the assignments. So, for the record, I
13 will read the assignments, and those are all in
14 the binder.

15 JUDGE BURKHARDT: It should be on
16 your --

17 CHAIRPERSON HARRINGTON: All righty.

18 Just making sure. They're not in the same order.

19 All righty. So, Natalie Smart versus Lake

20 Central School Corporation, which is

21 case EMha17071184, it has been assigned to

22 Comm. Blackburn.

23 COMM. BLACKBURN: Could I forego any

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1 appeals for next month? I will be on vacation --

2 CHAIRPERSON HARRINGTON: Okay.

3 COMM. BLACKBURN: -- the 16th through

4 September 17th, for that adequate notice.

5 CHAIRPERSON HARRINGTON: Well, thank

6 you for giving us that heads-up.

7 COMM. BLACKBURN: Uh-huh.

8 CHAIRPERSON HARRINGTON: So, in lieu

9 of that, I will do a quick -- I'm just assessing

10 so that I can reassign. I will take that case.

11 I'm just looking at the other assignments, and

12 I'm noting that. So, case -- let's see. Bear

13 with me. There's an issue. So, the cases on the

14 agenda and the cases on the log are not matching.

15 So, the second case on the log is, again, of

16 Natalie Smart versus Valparaiso Community
17 Schools, and I'm just trying to reconcile on --
18 on the log, and it's not there.

19 JUDGE BURKHARDT: Okay.

20 CHAIRPERSON HARRINGTON: So, see,
21 this is Natalie Smart versus Valparaiso, which is
22 actually no. 2. The first one was the Lake
23 School, so I might need your help. So, I will

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1 read -- 1 and 2 look like they match.

2 COMM. RAMOS: This one?

3 COMM. JACKSON: Well, 1 and 2 are
4 different.

5 CHAIRPERSON HARRINGTON: Oh, okay.
6 Thank you.

7 MR. WILSON: You thought they were
8 the same?

9 CHAIRPERSON HARRINGTON: I'm looking
10 too fast. So, the second one is Natalie Smart
11 versus Valparaiso Community Schools,
12 EMha17071183. So, to clarify, that's the one

13 that is assigned to me that was assigned to
14 Comm. Blackburn. The case no. 2 has been already
15 assigned to Comm. Slash; all right?

16 And then the third one is Vicki Linder
17 versus Tempo Properties, which is HOha18040208.
18 Here it is. And that one has been assigned to
19 Comm. Edwards.

20 COMM. EDWARDS: Okay.

21 CHAIRPERSON HARRINGTON: All righty.
22 Case 4 is Carolyn King versus Maple Creek Village
23 Apartments, which is case HOra18030118. Bear

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1 with me. That is 4, and that has been assigned
2 to Comm. Long, and I would just ask -- I'm not
3 sure when her return is -- that we verify, and if
4 there is any issue with that assignment, if we
5 can let Comm. Slash know so we can reassign
6 before the next meeting.

7 JUDGE BURKHARDT: Okay. Will do.

8 CHAIRPERSON HARRINGTON: The fifth is
9 Reginald Monneus versus Laperla Apartments,
10 HOfs17121405, and that has been assigned to

11 Comm. Jackson.

12 The next case is Lillie Glenn versus
13 Davidson Hotel LLC, case EMra17061130, and that
14 has been assigned to Comm. Ramos.

15 The next one is case 7, Latasha Hawkins
16 versus Allison Transmission, EMra17091261. That
17 has been assigned to me, Comm. Harrington.

18 Case 8 is Jonathan Garza versus Stephanie
19 Knopic versus Kristen Hughes, H0re18030154, and
20 that has been assigned to Comm. Slash.

21 The next is Antoinette Green versus
22 Oakwood Properties-Bob McGinnis, H0sh18040165,
23 and I will reassign that to Comm. Ramos. It was

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1 originally assigned to Comm. Blackburn.

2 The next is Erica Tate versus Yorktown
3 Farms Associates, H0ha18020079, and that is
4 assigned to Comm. Edwards.

5 The next is Donevette Evans versus
6 Horseshoe Hammond, PAr1711380 [sic], and that is
7 assigned to Comm. Long, and I would ask for that

8 same verification.

9 And the last is James Hunt versus
10 Bargersville Community Fire Protection District,
11 EMra17050164, and that is assigned to
12 Comm. Jackson. And I will leave the notes where
13 we did the reassignments for the staff so they
14 can have that record.

15 JUDGE BURKHARDT: Thank you. We will
16 upload that to SharePoint.

17 CHAIRPERSON HARRINGTON: All right.
18 The other New Business we have on the agenda is
19 the Oral Argument, and I will defer to the ALJ to
20 share an overview and then go into the oral
21 argument for this case.

22 JUDGE BURKHARDT: Sure. Thank you
23 very much.

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1 So, as you know, we discussed in our
2 training at the Annual Meeting administrative
3 review is a key part of administrative justice.
4 When a party wants to object to an order by the
5 Administrative Law Judge which had disposed of a

6 case, then timely objections can be filed, and
7 the Commission, at its own choosing, can elect to
8 have oral argument.

9 That was the case in this case before you
10 now, Erica Shannon v. Pedcor Management Corp.,
11 Princeton Lake Apartments, HOfs16101514, where,
12 after the ICRC Director dismissed the complaint
13 under the Indiana Fair Housing Act on April 24th,
14 2017, and the Commission later issued a notice of
15 reversal, stating that the dismissal had been
16 reversed into a finding of reasonable cause, I,
17 as the Administrative Law Judge, dismissed the
18 proceedings explicitly under the Indiana Fair
19 Housing Act.

20 And so, neither Erica Shannon or
21 Respondent had filed objections. The ICRC
22 Director submitted objections. The Commission
23 previously elected to hold oral argument on that



1 dispositive order. So, now the Commission can
2 entertain the oral argument and utilize it as a

3 tool during its administrative review of the
4 order, and then following the same process as
5 always, choose whether to affirm, modify or
6 dissolve the ALJ's order, or even to remand it
7 with or without instructions. That's the
8 decision on the table today.

9 CHAIRPERSON HARRINGTON: Okay.

10 Are there any questions?

11 (No response.)

12 CHAIRPERSON HARRINGTON: All right.

13 You can proceed with the oral argument, and I am
14 setting a time limit. I was informed that the
15 typical time is about 15 minutes for an oral
16 argument, so I'm just trying to keep us on track,
17 give or take.

18 MS. RYKER: Sure. Good afternoon,
19 and may it please the Commission. My name is
20 Caroline Stevens Ryker, and I represent the
21 Complainant in this matter, Executive Director
22 Wilson in his official capacity as Executive
23 Director of the Indiana Civil Rights Commission.

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1 Although Complainant's objections to the
2 April 9th, 2018 order are largely based on
3 procedural and technical points of law, at the
4 heart of this case is receiving justice for
5 aggrieved person Ms. Erica Shannon as well as for
6 Pedcor Properties, the Respondent.

7 It is worth noting at the onset of this
8 argument that the complaint before as the basis
9 of this case was settled in March of 2018. That
10 settlement agreement included affirmative relief
11 in the public interest, injunctive relief for the
12 aggrieved person, as well as monetary settlement
13 of \$7,500. Without the appeals process that the
14 April 9th, 2018 order states does not exist, the
15 settlement would not have been possible.

16 Respectfully, Complainant asks that this
17 Commission revise or remand the April 9th, 2018
18 order such that the order reflects: First, there
19 is a right to appeal a no-reasonable-cause
20 finding to the Commission; second, a proper
21 appeal was administered this case; third,
22 Respondent's notice of election was effective in
23 moving this case to state court; and fourth, the

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1 term proposed should be included in the title of
2 the April 9th, 2018 order.

3 Complainant makes these objections on four
4 distinct grounds. First, the Administrative Law
5 Judge incorrectly concluded that there is no
6 right to appeal a no-reasonable-cause finding to
7 the Commission. Second, the April 9th, 2018
8 order was issued in violation of the due-process
9 rights of all parties. Third, the April 9th,
10 2018 order was issued after the Administrative
11 Law Judge no longer had jurisdiction over the
12 case. And fourth, the 2018 order does not
13 reflect in its title that it is a proposed order
14 as opposed to a final order.

15 In order to help Complainant make these
16 arguments here today, and with the Commission's
17 permission, I have three different documents for
18 the Commission. The first is a copy of
19 March 2018 settlement agreement, the second is a
20 short summary of the arguments that I will be
21 making here today, and the third is a copy of the

22 proposed order that Complainant respectfully asks
23 this Commission to adopt.

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1 Complainant's first objection is on the
2 grounds that the Commission's governing bodies of
3 law do expressly provide for a right to an appeal
4 of a no-reasonable-cause finding, as supported by
5 the plain language of the law, the statutory
6 construction of the law, and the legislative
7 history of the governing laws.

8 As the Indiana Supreme Court has explained
9 in *Sees vs. Bank One*, decided in 2005, where
10 there's ambiguity, the Court first turns to the
11 plain language of the law. The Indiana Civil
12 Rights Commission is governed by three different
13 bodies of law: The Indiana Civil Rights Law, the
14 Indiana Fair Housing Act, and the Indiana
15 Administrative Code, specifically Articles 1, 2
16 and 3 of Title 910.

17 It is in the Indiana Administrative Code
18 specifically in Article 1 of Title 910, that
19 there is an express right to an appeal granted.

20 At Section 1-3-2, where the Indiana
21 Administrative Code reads, "A party who is
22 aggrieved by a finding of the director
23 or...deputy director, other than a finding of

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1 probable cause, may file, within...15 days after
2 receipt of a notice of such a finding, a written
3 appeal of such finding with the commission."
4 Importantly, this language does not distinguish
5 between a no-probable-cause finding or a
6 no-reasonable-cause finding. It simply says, "a
7 finding."

8 However, the Administrative Law Judge
9 found that this language is ambiguous because
10 Article 1 of Title 910 of the Indiana
11 Administrative Code does not expressly mention
12 "reasonable cause," or "no-reasonable-cause
13 findings," and Article 2 of Title 910 of the
14 Indiana Administrative Code does not grant a
15 similar right to an appeal, and that title
16 corresponds with the Indiana Fair Housing Act.

17 However, any ambiguity in the law should
18 still be resolved in favor of the existence of
19 the right to appeal a no-reasonable-cause finding
20 to the Commission. As the Indiana Supreme Court
21 explained in Indiana Civil Rights Commission
22 versus County Line Park, decided in 2000, the
23 statute is examined as a whole, and it is often

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1 necessary to avoid excessive reliance on a strict
2 literal meaning with a selective reading of
3 individual words.

4 The legislature is presumed to have
5 intended the language used in the statute to be
6 applied logically, and not to bring about an
7 unjust or absurd result. The Administrative Law
8 Judge found that silence in the Indiana Fair
9 Housing Act and the second part of the Indiana
10 Administrative Code means the absence of a
11 procedural right.

12 Complainant urges this Commission to take
13 a different position; that silence in Indiana
14 Fair Housing Act and silence in the first -- or

15 excuse me -- second part of the Indiana
16 Administrative Code merely means that we use the
17 procedure that already exists in the Indiana
18 Civil Rights Law or the Indiana Administrative
19 Code's first section.

20 If silence is read as absence, unjust and
21 absurd results will follow. The laws that govern
22 the Indiana Civil Rights Commission work together
23 to create a framework for how the Indiana Civil

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1 Rights Commission operates. Each law creates
2 unique substantive rights, but they rely on each
3 other to create a complete set of procedural
4 rights. The Indiana Civil Rights Law creates and
5 establishes the Indiana Civil Rights Commission
6 and grants it its powers from accepting
7 complaints to appointing an Administrative Law
8 Judge.

9 Alternatively, the Indiana Fair Housing
10 Act admits on its face that it's procedurally
11 incomplete. In the purpose section of the

12 Indiana Fair Housing Act, at 22-9.5-1-1, the law
13 reads that its purpose is to provide procedure
14 for investigating and settling complaints of
15 discriminatory housing practices. Far more
16 procedure is necessary to bring a complaint under
17 the Indiana Civil Rights -- or Indiana Fair
18 Housing Act than simply investigating and
19 settling complaints.

20 However, the Indiana Fair Housing Act
21 resolves this issue by stating that the Indiana
22 Fair Housing Act is to be administered by the
23 Indiana Civil Rights Commission. By using this

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1 term "administered," the Indiana Fair Housing Act
2 allows the Indiana Civil Rights Commission to
3 reach into the Indiana Civil Rights Law and pull
4 in any missing procedure.

5 One example of the importance of this
6 procedural bridge between the Indiana Civil
7 Rights Law and the Indiana Fair Housing Act is
8 the appointment process for the Administrative
9 Law Judge. The Indiana Fair Housing Act never

10 mentions an Administrative Law Judge.

11 And although the Administrative Law Judge
12 is mentioned in Title 2 of the -- excuse me --
13 the second part of the Indiana Administrative
14 Code, it points back to the first part of the
15 Indiana Administrative Code for the procedure for
16 appointing an Administrative Law Judge.

17 Accordingly, if silence is read as the
18 absence of procedure, then the Indiana Civil
19 Rights Commission cannot appoint an
20 Administrative Law Judge in cases brought under
21 the Indiana Fair Housing Act. This is an unjust
22 and absurd result.

23 The legislative history of the Indiana

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1 Fair Housing Act supports this interpretation of
2 the law. The Administrative Law Judge relied on
3 the legislative history of the Federal Fair
4 Housing Act, and it's true that under the Federal
5 Fair Housing Act there is no right to an appeal
6 of a no-reasonable-cause finding.

7 However, the Indiana Fair Housing Act is a
8 unique law. It's a state law with its own
9 legislative history. In fact, the Indiana Fair
10 Housing Act was only administered by Article 1 of
11 Title 910 of the Indiana Administrative Code,
12 which includes the right to an appeal for the
13 first three years that the law was passed.

14 Additionally, the Indiana Civil Rights Law
15 includes a call to read our laws broadly.

16 Furthermore, the Federal Fair Housing Act
17 creates a minimum for the rights given to
18 individuals, not a maximum for those rights. The
19 Indiana Fair Housing Act requires that the state
20 law be substantially equivalent to the federal
21 law. However, substantial equivalence does not
22 mean exactly the same.

23 Instead, in the Code of Federal Registrar



1 it states that the state or local law is
2 different than the Act in a way that does not
3 diminish coverage of the Act, including, but not
4 limited to, the additional protection of

5 prohibitive basis. Then the state or local law
6 may still be found substantially equivalent.

7 Furthermore, the Department of Housing and
8 Urban Development reviews the Indiana Civil
9 Rights Commission each year for substantial
10 equivalency. This review includes an assessment
11 of the agencies, and I quote from the Code of
12 Federal Registrar here, cause or no-cause
13 determinations for quality of investigations and
14 consistency with the appropriate standards.

15 Despite the Indiana Civil Rights
16 Commission's longstanding practice of granting
17 appeals of no-reasonable-cause cases, the
18 Department of Housing and Urban Development has
19 found that the Indiana Civil Rights Commission is
20 substantially equivalent to the Federal Fair
21 Housing Act.

22 Accordingly, silence in the Indiana Fair
23 Housing Act and the second part of the Indiana

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2 procedural right, but a directive to use the
3 already existing procedure in the Indiana Civil
4 Rights Law and the first part of the Indiana
5 Administrative Code, which includes the right to
6 an appeal.

7 Complainant's second objection is on the
8 grounds that the April 9th, 2018 order was issued
9 in violation of due-process rights of all
10 parties, because the Administrative Law Judge
11 raised the legal issue, and neither party was
12 given an opportunity to respond to the legal
13 issue.

14 The Indiana Supreme Court found in 1888,
15 in Garvin versus Dausman, that due process
16 includes an opportunity to be heard after due
17 notice. Here, no notice was given to either
18 party, and neither party was able to respond to
19 the legal issue raised.

20 Although the 7th Circuit and the Indiana
21 Courts have not yet had cause to rule on whether
22 this set of circumstances is a due-process
23 violation, the 11th Circuit has. In Esslinger

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1 versus Davis, an 11th Circuit case decided
2 in 1995, the Court found, "...we think it [is]
3 fundamentally unfair for a court sua sponte to
4 [evoke] a procedural default without giving the
5 petitioner an opportunity to show cause
6 for...default." That same decision was reached
7 in 2011 in Tazoe versus Airbus, and in 2017 with
8 Westley versus Alberto, both 11th Circuit cases.

9 Complainant urges this Commission to take
10 the 11th Circuit case approach for public policy
11 reasons that are obvious in this case. This case
12 settled in March of 2018, and despite that
13 settlement, because of the importance of the
14 legal issues raised in this case, Complainant has
15 continued to litigate the case. Similarly, had
16 Respondent known of the legal issues pending
17 before the Administrative Law Judge, it likely
18 would never have entered into a settlement
19 agreement to begin with.

20 Complainant makes its third objections on
21 the grounds that the Administrative Law Judge no
22 longer had jurisdiction over the case at the time
23 the order was issued. The Administrative Law

1 Judge was divested of jurisdiction at the time
2 the complainant filed its case in State Court,
3 because at that time, the Respondent's notice of
4 election had effectively moved the case to State
5 Court.

6 The notice of finding on the appeal was
7 issued October 23rd, 2017. Respondent filed its
8 notice of election in November of 2017, and
9 within the 30 days prescribed by statute,
10 Complainant filed its State Court complaint in
11 December of 2017.

12 Five months passed after the
13 Administrative Law Judge became aware of the
14 issue raised in the April 9th, 2018 order, and
15 four months passed after the Administrative Law
16 Judge became aware Complainant was required to
17 file in State Court. But no notice was given to
18 either party that the Administrative Law Judge
19 was retaining jurisdiction over the case, and by
20 the time the April 9th, 2018 was ordered -- was

21 issued, the complaint in State Court had actually
22 been dismissed.

23 Complainant's fourth and final objection

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1 to the April 9th, 2018 order is that the order
2 facially appears to be a final order because the
3 term proposed is missing in the title of the
4 order. The Indiana Administrative Orders and
5 Procedures Act states that only an agency's head
6 may issue a final order, in this case, the
7 Commission.

8 Although the final text of the April 9th,
9 2018 order does state that the order is a
10 proposed order, because the Commission deals with
11 parties that may not always have a high level of
12 legal sophistication, the term "proposed" should
13 be included in the title to alert the parties of
14 the right to appeal the finding to the
15 Commission.

16 Accordingly, and for the foregoing
17 reasons, Complainant, Executive Director
18 Gregory L. Wilson, respectfully asks that this

19 Commission revise and remand the April 9th, 2018
20 order to reflect that there is a right to appeal
21 a no-reasonable-cause finding to the Commission;
22 that a proper appeal was administered in this
23 case; the notice of election issued by Respondent

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1 was effective in moving the case to State Court;
2 and the term "proposed" should be added to the
3 title of the April 9th, 2018 order.

4 Complainant makes this request so that the
5 Indiana Fair Housing Act can be understood as
6 procedurally complete, and so that the Indiana
7 Fair Housing Act can be properly enforced by the
8 Indiana Civil Rights Commission.

9 Thank you.

10 CHAIRPERSON HARRINGTON: Okay. From
11 a process standpoint, are the Commissioners
12 allowed to ask questions?

13 MS. RYKER: Yes.

14 CHAIRPERSON HARRINGTON: Are there
15 any questions?

16 COMM. JACKSON: Was all of that true?

17 No notice given? Was it vetted out to find out?

18 MS. RYKER: The first time that the
19 parties became aware of the legal issue that was
20 raised in the April 9th, 2018 order, the validity
21 of the appeal, was when the order was issued.

22 COMM. JACKSON: So, they were given
23 notice, both parties?

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1 MS. RYKER: They weren't given
2 notice, because the order was issued before the
3 parties were aware of the legal issue.

4 COMM. JACKSON: By law, were they
5 supposed to be given notice?

6 MS. RYKER: According to the 11th
7 Circuit, yes. As I mentioned, the State Court
8 and the 7th Circuit have not had a chance to rule
9 on this issue yet.

10 COMM. JACKSON: But they were not
11 given notice?

12 MS. RYKER: Correct.

13 COMM. JACKSON: And was the

14 Administrative Law Judge without jurisdiction
15 over that case? Was that a fact?

16 MS. RYKER: Under the Indiana
17 Administrative Code, when a properly -- a timely
18 and properly served notice of election is sent in
19 to the Administrative Law Judge, it states that
20 at that time, the jurisdiction moves to State
21 Court, and the order issued on April 9th, 2018
22 does not state that that notice of election was
23 improper. So, at that time, it should have been

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1 moved to State Court. The State Court could have
2 also ruled on this issue as well if it had been
3 raised by Respondent.

4 COMM. JACKSON: So, did that judge
5 rule on that case --

6 MS. RYKER: So --

7 COMM. JACKSON: -- without having
8 jurisdiction?

9 MS. RYKER: The Administrative Law
10 Judge, yes; that is the Complainant's position.

11 COMM. JACKSON: Is that true? That's
12 the Complainant's position, but is it true, that
13 the Administrative Law Judge had no jurisdiction
14 over the case?

15 MS. RYKER: Based on Complainant's
16 interpretation of the law, yes.

17 CHAIRPERSON HARRINGTON: So -- and I
18 want to just piggy-back and ask a question.
19 We're citing cases where it would say that he
20 wouldn't have jurisdiction, but what has been our
21 practice, or has there been any practice in other
22 cases of what we have done --

23 COMM. JACKSON: Well, I'm not --

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1 CHAIRPERSON HARRINGTON: -- in a
2 similar -- because this is a -- it feels like a
3 matter of process.

4 COMM. RAMOS: Yes.

5 COMM. JACKSON: Yeah. Well, I think
6 if you go based on precedent --

7 MS. RYKER: Uh-huh.

8 COMM. JACKSON: -- precedent is one

9 thing, the law is something else.

10 CHAIRPERSON HARRINGTON: Absolutely.

11 COMM. JACKSON: I'm interested in the
12 law. On a local level, things are done based on
13 precedent.

14 MS. RYKER: Uh-huh.

15 COMM. JACKSON: When I sat on the
16 Merit Board, there were things done based on
17 merit, which is the law, but most everything was
18 done by precedent. So, if something happened,
19 "Well, this is a precedent," but that brushed up
20 against the law.

21 And I think I get back to not who's right,
22 but what's right, and what's right is based upon
23 the law. So, if by law they were supposed to

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1 make sure everybody was notified and they were
2 not notified, and then if the Administrative
3 Judge who ruled on the case had no jurisdiction
4 over the case, then I can't see how that would be
5 fair to the Complainant.

6 COMM. RAMOS: Madam Vice-Chair?

7 CHAIRPERSON HARRINGTON: Uh-huh.

8 COMM. RAMOS: I recommend that we
9 listen to the Administrative Law Judge or whoever
10 responds on the other side of it, the other 15
11 minutes, because there are going to be questions
12 that might be answered in that process, and then
13 at the end of the time, there will be an
14 opportunity for rebuttal, and that'll be an
15 excellent time for those great questions from
16 Mr. Jackson, which I think are excellent
17 questions --

18 CHAIRPERSON HARRINGTON: Uh-huh.

19 COMM. RAMOS: -- but I think we may
20 hear another piece of it that will provide a
21 little more detail and answer some of those
22 questions.

23 CHAIRPERSON HARRINGTON: Okay.

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1 MS. RYKER: Thank you.

2 JUDGE BURKHARDT: Well, thank you,
3 Comm. Ramos and Commission, for the opportunity

4 to speak to this matter. However, I will
5 certainly not argue in the oral argument since --
6 against the Commissioner -- I mean the Commission
7 itself. This is an interesting dynamic. I'll
8 simply state that I will obviously yield as
9 required to the full Commission if the matter is
10 remanded with any instructions or without
11 instructions. Are you asking the ALJ to simply
12 explain the decision in light of what was just --

13 COMM. RAMOS: Yes.

14 JUDGE BURKHARDT: Okay. I'm happy to
15 do so. Well, Indiana Civil Rights Commission v.
16 Indianapolis Newspapers, an Indiana Supreme Court
17 case, states that "Nothing may be read into a
18 statute which is not within the manifest
19 intention of the legislature as ascertained from
20 the plain and obvious meaning of the words of the
21 statute." I believe that that Indiana Civil
22 Rights Commission case is dispositive of this
23 issue. Nothing may be read into the statute.

1 What was just stated was that sometimes
2 the Administrative Code applicable to Fair
3 Housing cases imports certain legal constructs
4 from the Civil Rights Law Code. As the
5 Commissioners know, we administer two laws:
6 Civil Rights Law, Fair Housing Act. Both have
7 their Administrative Codes: Civil Rights Law,
8 910 IAC 1, Fair Housing Act, 910 IAC 2.

9 This matter was dismissed only under the
10 Fair Housing Act, only under 910 IAC 2. What was
11 just shared was that sometimes 910 IAC 2 imports
12 910 IAC 1, specifically here, the right to an
13 appeal. Well, fortunately it was explained; the
14 law is explicit when it does so. There is an
15 explicit provision in 910 IAC 2 which imports the
16 ALJ provisions of 910 IAC 1. There is no
17 explicit importation of the rest of the Code.

18 As was also mentioned, the Fair Housing
19 Act was administered under 910 IAC 1 before
20 910 IAC 2 was passed. Well, then it was passed,
21 and it imports the entire legal construct, which
22 since 1990 has been substantially equivalent to
23 the federal law. So, the only comment I made as

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1 the ALJ in disposing of this case was -- it's
2 interesting, but the question of whether the ALJ
3 had jurisdiction, this was dismissed because the
4 Commission didn't have jurisdiction.

5 That's the argument laid out in the
6 conclusions of law is that once, under 910 IAC 2,
7 in administering the Fair Housing Act, no
8 reasonable cause is found, because there is no
9 importation of the 910 IAC 1 code, as is done in
10 other situations but explicitly not done here,
11 and we can't read that into it, when the
12 Commission, Chair Slash, at that time,
13 Comm. Slash, recommended reversal of the
14 no-reasonable-cause decision, I believe there's
15 no contention that there was no explicit legal
16 basis to do so under the Fair Housing Act. That
17 was acting under the Code applied to Civil Rights
18 Law cases, here arguing that it would be done so
19 here.

20 So, I would simply note that this matter,
21 this decision, never foreclosed the rights of the
22 Complainant to receive her due-process rights to

23 a decision on her Civil Rights Law complaint.



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1 The notice of finding mentions no reasonable
2 cause, even though the Complainant filed a
3 complaint alleging violation of both laws, then
4 Direct -- Deputy Director Malone issued a finding
5 only under the Fair Housing Act, not under the
6 no -- not under the Civil Rights Law stating no
7 probable cause.

8 So, because only the Indiana Fair Housing
9 Act decision was made, the ALJ finds, "Well, that
10 can't proceed since there are no appeal rights
11 under that law." Whether the Commission wants to
12 fulfill its duty to issue a no-probable-cause or
13 probable-cause decision under the Civil Rights
14 Law is entirely still on the table, in the ALJ's
15 view.

16 This decision states that the Fair Housing
17 Act proceedings were dismissed. There was no
18 dismissal of the Civil Rights Law claims, because
19 those never got their probable -- or

20 no-probable-cause decision, which could have
21 opened a lawful door for an appeal.

22 I'll also simply mention the complaint
23 about the title of this order, findings of fact

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1 conclusions of law and order. Yes, that is
2 different from past practice, and it is
3 explicitly supported by the law. The law only
4 mentions proposed decisions on two to three
5 occasions, all of which only refer to something
6 parties may do. It does not refer to something
7 the Judge does.

8 Proposed decisions don't get affirmed,
9 modified or dissolved, decisions do, and the
10 AOPA, Administrative Orders and Procedures Act,
11 says the ALJ may give parties opportunity to file
12 proposed findings of fact, conclusions of law and
13 orders. In fact, the Indiana Civil Rights Law
14 Code itself states that the ALJ may give parties
15 at appropriate times opportunity to file proposed
16 findings of fact, conclusions of law and order.

17 And so, proposed orders, to state that

18 these are findings of fact, conclusions of law
19 and order is accurate under AOPA, and just on its
20 face, that's what these are. Administrative
21 review is then available if you object to them.
22 As explicitly mentioned, administrative review of
23 this decision may be obtained.

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1 So, this is not a usurping of your
2 ultimate authority. This is simply a decision
3 made by your delegated presiding officer, which
4 then you get to affirm, modify or dissolve, but
5 under AOPA, that Judge does not make proposals.
6 The Judge makes decisions. I hope that's clear,
7 based off those provisions I quoted.

8 The Judge may give the parties opportunity
9 to file proposed decisions after a hearing, and
10 in fact, I have some on my desk, and that's
11 common practice; the parties will submit a
12 proposed decision. But the Judge doesn't submit
13 proposed decisions, the Judge makes them, and the
14 Commission affirms, modifies or dissolves.

15 So, I hope that that's clear, but
16 basically, the jurisdictional questions, in my
17 opinion, not "Did the ALJ have jurisdiction over
18 this?" but "Did the Commission, in reversing a
19 no-reasonable-cause finding, have jurisdiction to
20 do so?" And if not, what should the Judge have
21 done? Should the Judge have entertained that
22 converted no-reasonable-cause decision?
23 I would expect a remand could make that

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1 clear, if you expect the Judge to officially find
2 that appeals of no-reasonable-cause decisions are
3 possible. I think that's the request is that you
4 find that.

5 I would simply point out when the Fair
6 Housing Act imports some provisions but doesn't
7 do so for this one, and in fact, the failure to
8 do so puts it totally in line with the
9 substantially equivalent federal law, which
10 states, as I wrote in my finding, the statute
11 does not contemplate a review of reasonable-cause
12 determinations, provides no right to appeal of

13 reasonable-cause determinations.

14 I know past practice was to do so. I
15 simply was acting on what I see in our statutes.
16 So, that's -- that's the explanation of this
17 decision as I see it in light of this argument.

18 Any questions?

19 COMM. JACKSON: So, where in here
20 does it respond to this issue of where it says
21 no -- none of the parties were given notice in
22 the case before settlement?

23 JUDGE BURKHARDT: Yes.

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1 COMM. JACKSON: In here does it say
2 we did give them proper notice, or --

3 JUDGE BURKHARDT: Well, sure. Notice
4 was provided that if the parties disagreed with
5 this, they can avail themselves of administrative
6 review. That notice is explicit in the order;
7 administrative review of this decision may be
8 obtained. This was not a heavy-handed document
9 with finality.

10 It opened the door to these objections to
11 put before you, which the parties could have --
12 the actual Complainant, Erica Shannon, and the
13 Respondent could have been here to participate in
14 that administrative review process, but they
15 received notice of that here. And I think the
16 concern, as some precedent was cited stating
17 dismissal sua sponte on the Judge's own is
18 improper for procedural default.

19 COMM. BLACKBURN: Could you define
20 "sua sponte"?

21 JUDGE BURKHARDT: Yes, yes. On its
22 own --

23 COMM. BLACKBURN: What?

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1 JUDGE BURKHARDT: -- is what I said.
2 Yeah. So, the Judge to do it on his own, sua
3 sponte.

4 COMM. BLACKBURN: Right.

5 JUDGE BURKHARDT: That would be
6 inappropriate following procedural default.

7 COMM. BLACKBURN: Okay.

8 JUDGE BURKHARDT: Here, I'm not
9 saying there was a procedural default by the
10 party, you failed to have a lawyer who could get
11 you through our complicated process. That's not
12 the case. That would be inappropriate. I'm
13 stating this was an administrative defect of a
14 Commission to reverse a decision when there was
15 no, as I saw it, provision to do so.

16 COMM. JACKSON: So, this was not
17 where notice was not given as to --

18 COMM. BLACKBURN: Huh-uh, no.

19 COMM. JACKSON: -- this was getting
20 ready to happen --

21 COMM. BLACKBURN: No.

22 COMM. JACKSON: -- that kind of
23 thing?

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1 JUDGE BURKHARDT: The Judge did not
2 send out a notice stating, "I'm about to dismiss
3 of the case."

4 COMM. JACKSON: That's what you're

5 saying?

6 JUDGE BURKHARDT: Yes, I did not send
7 out a -- just like the Judge may at times in his
8 discretion allow the parties to file briefs,
9 motions, proposed decisions, I did not solicit
10 them.

11 COMM. JACKSON: So, the Respondent
12 is -- or the Complainant is saying they did not
13 receive notice that the case was going to be
14 settled; is that what --

15 JUDGE BURKHARDT: I will let them
16 speak for themselves, but I can state from what I
17 did, I did not -- I did not entertain briefs and
18 motions and argument about that topic. I didn't
19 provide advance notice that I would be dismissing
20 this.

21 COMM. JACKSON: And is that what you
22 are saying?

23 MS. RYKER: Yes, Commissioner.

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1 COMM. JACKSON: Are we supposed to do
2 that? Is that something -- is that part of the

3 procedure? Is that part of the law or process,
4 where you're supposed to give notice?

5 JUDGE BURKHARDT: That's a
6 presiding -- I mean I think there may be argument
7 about this, but I would just simply state --

8 COMM. JACKSON: What are you saying?

9 COMM. BLACKBURN: It is in the --

10 COMM. JACKSON: Well, this is like a
11 TV show. I mean you all gave me all of these
12 papers and expect me to read it in 15 minutes.
13 I'm not going to do that.

14 COMM. BLACKBURN: And I'm sure you --

15 COMM. JACKSON: So, you know, in a TV
16 show, you have to ask a lot of questions.

17 JUDGE BURKHARDT: Uh-huh.

18 COMM. JACKSON: You know, if I'm able
19 to take this home and read it --

20 JUDGE BURKHARDT: Sure.

21 COMM. JACKSON: -- go over it, then
22 you have less time, but this is a very important
23 matter, and I think --

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1 JUDGE BURKHARDT: Sure.

2 COMM. JACKSON: -- and this young
3 lady or this woman is saying that she did not get
4 notice that the case was going to be settled, and
5 my question is: Is it procedural? Is it part of
6 the law or the process that we are supposed to
7 give notice that we're going to settle the case?

8 CHAIRPERSON HARRINGTON: And can I
9 make a point of just process? So, as far as
10 today, we don't have to make a decision today.
11 We can defer --

12 COMM. JACKSON: Well, I'm not asking
13 us to make --

14 CHAIRPERSON HARRINGTON: Well, if I
15 can --

16 COMM. JACKSON: -- I'm not asking us
17 to make a decision.

18 CHAIRPERSON HARRINGTON: Well, no,
19 I'm just -- from a process, I know you said,
20 "like a TV show," so I just wanted to clarify I
21 came in early and asked questions. We can take
22 this information so that we can review it more
23 thoroughly, which was one of your comments, and

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1 we can --

2 COMM. JACKSON: No, I said I'm not --

3 CHAIRPERSON HARRINGTON: -- respond

4 to it next --

5 COMM. JACKSON: -- I said I'm not
6 going to do that. My -- I just want an answer to
7 my question, and my question is: Is it law that
8 we are supposed to provide a notice that we're
9 going to settle a case? Is that the law? Are we
10 supposed to do that; yes or no?

11 JUDGE BURKHARDT: I don't believe
12 that's -- I'm not sure if that's the position --
13 that's not the ALJ's duty. The ALJ is not a
14 conciliator. The ALJ doesn't even always know
15 what the parties are doing in conciliation. The
16 ALJ just presides over the complaint.

17 MS. RYKER: If I can speak to that,
18 Commissioner. The issue is that we weren't given
19 notice that the April 9th, 2018 order was going
20 to effectively resolve the case. So, during
21 litigation before the Administrative Law Judge,

22 parties can brief issues, they can discuss these
23 points of law before getting to the point where

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1 we're part of an appeals process.

2 COMM. JACKSON: So, we don't have to
3 submit --

4 MS. RYKER: So, under Indiana law,
5 due process requires a notice and an --

6 COMM. JACKSON: Okay.

7 MS. RYKER: -- opportunity to be
8 heard.

9 COMM. JACKSON: That's what I'm
10 getting at.

11 MS. RYKER: And that's the Garvin
12 versus Dausman case. This particular issue has
13 come up in the 11th Circuit, and to be totally
14 transparent, this is an open issue of law.

15 COMM. JACKSON: So, by law, we're
16 supposed to give notice, and we did not do that.

17 CHAIRPERSON HARRINGTON: A
18 clarification: She says it's an open issue of

19 law. It hasn't been determined, and --

20 MS. RYKER: Due process is different,
21 Commissioner, but in this set of circumstances,
22 yes.

23 CHAIRPERSON HARRINGTON: So, just so

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1 we can be concise, does due process require that
2 the Judge send a notification is the question
3 that the Commissioner continues to ask. So, does
4 due process require that the Judge send
5 notification is our question.

6 MS. RYKER: Under Garvin versus
7 Dausman, yes.

8 JUDGE BURKHARDT: The problem with
9 that is the ALJ is not the ultimate authority.
10 The ALJ did not close this case. That's evident
11 by the fact that we are here today. The
12 notice -- the decision states administrative
13 review may be obtained. That's the due process
14 which is enjoyed currently.

15 CHAIRPERSON HARRINGTON: Well, is
16 there a different interpretation of the law

17 between -- and that's not spelled out for us
18 here; correct? So, is that something that we can
19 have both sides, so that we can do any type of
20 research that we need to do? Because I feel that
21 this would be something -- I don't think it comes
22 up all of the time, but it would be precedent
23 setting, so that we know the implication or the

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1 law on both sides so we can make a decision.

2 The other piece, there was an additional
3 law brought in of the Administrative Code. In
4 our training, we were informed about two
5 different laws. The additional law you brought
6 in was the Administrative Code, and just having
7 clarification of why does that supersede in this
8 case? And I understand that there was an action
9 taken that might not have -- should have taken,
10 and we proceeded, and so that has -- that factors
11 into this.

12 So, I just want to make sure we understand
13 why the Civil Rights Code and the Equal Housing

14 Code, there's another code you brought in, and
15 how does that play? Because that is the basis of
16 why you're saying there's an issue. So, for me,
17 I just need additional information on the laws,
18 and I give it to the Director.

19 MR. WILSON: Yeah. I think that --
20 and Comm. Jackson is right. You're going to
21 have -- really, you have to ask the questions,
22 because there is a difference of -- about the law
23 here.

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1 CHAIRPERSON HARRINGTON: Uh-huh.

2 MR. WILSON: And really it's going to
3 take your questions so that you, the Commission,
4 can make the decision based on what you're
5 hearing and the questions that you're asking.
6 Even if you took it home, I think that you would
7 have to still come back with the same thing and
8 ask these two here the questions about the law,
9 because they have looked at this a certain way.
10 And so, I'm not telling the Commission
11 what to do. I'm just saying I think that's

12 important to look at this case as it's been
13 presented, and then ask the questions to them
14 about what you want to know and understand.

15 COMM. BLACKBURN: With all due
16 respect, I think this is a nonissue. I think
17 that both legally and procedurally we would not
18 be here today with a hearing on the objections if
19 it were not procedurally correct. The statement
20 of the termination -- or determination by the ALJ
21 proceeds always to our consideration as
22 Commissioners to either agree with him, or send
23 it back for further study and investigation, or

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1 dismiss it.

2 The final decision is made according to
3 the law and procedure, by you and you and you and
4 I as Commissioners, and Comm. Edwards. So, this
5 is blown out of proportion to the understanding
6 of the law and procedures, from my standpoint.
7 I -- there are issues in this particular case
8 that had to do more with timing than other

9 considerations that got things confused.

10 When the issue was ordered, the ALJ no
11 longer had jurisdiction over it because the case
12 had already gone to the state. The state had
13 thrown it out or made its judgment with regards
14 to the case. And so, to go back and try to redo
15 that, we can't turn the clock back.

16 But we can procedurally do what's correct,
17 and that is to provide a hearing, as the Director
18 has determined, and you're hearing it now. If
19 you still have concerns that we are not following
20 the law or doing the procedure correctly, then
21 that's what you need to question, not what has
22 been done, but if you still feel that you're not
23 getting your day to make a final determination.

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1 MR. WILSON: I think it's -- I think
2 it's -- Commissioner, I think that the
3 presentation by Caroline tells you, the
4 Commission, what we at the Civil Rights agency
5 believes happened, and what our -- again, is we
6 feel like the -- based on the information about

7 the process, that we don't think that it was
8 processed correctly, and not -- when the
9 Commission made the decision, it came back, and
10 then all we're saying is that the process that
11 was used we don't agree with.

12 And Caroline, do you want to kind of touch
13 on that, please?

14 MS. RYKER: Yeah.

15 COMM. BLACKBURN: Could I go before
16 you, please? If the correction from your
17 standpoint is to suggest the use of the term
18 "proposed final decision" when the ALJ presents
19 his or her determination, would you say that is
20 your position?

21 MS. RYKER: So, there are really four
22 different issues in this case, and the reason
23 that we felt it was important to bring it before

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1 the Commission today is because the procedure
2 used here will affect other cases. So, it's not
3 specific just to Ms. Shannon's case in this

4 particular case. The procedure that will move
5 forward will affect cases that are currently
6 being litigated.

7 The biggest issue from the Complainant's
8 perspective is that there is a right to appeal a
9 no-reasonable-cause finding, and if we could at
10 least correct that issue, that's the biggest
11 issue from the Complainant's perspective.

12 CHAIRPERSON HARRINGTON: Can I just
13 say --

14 COMM. BLACKBURN: It's fund -- that's
15 fundamental.

16 MS. RYKER: Uh-huh.

17 COMM. BLACKBURN: And it's certainly
18 up to interpretation, but the Civil Rights Law is
19 to be taken broadly, and if there is, under 910,
20 a statement two sentences ahead of one that does
21 not say, "Oh, and by the way, you have the right
22 to appeal," common sense tells you we have the
23 right to -- that the public has a right to

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2 So, in my mind, that's not an issue. It's
3 only if you have somebody here acting in some
4 maverick way that can be perceived by the public,
5 both as intentional or unintentional, that it
6 deprives them of due process and the right to
7 appeal, then we have a real problem.

8 MS. RYKER: Commissioner, the due
9 process issue from the Complainant's perspective
10 is simply as it relates to the April 9th, 2018
11 order, so that the issue with the existence of
12 the right to appeal from the Commission is the
13 first legal issue, and then the second legal
14 issue for Complainant is that before the
15 Administrative Law Judge, the parties would have
16 liked an opportunity to discuss this particular
17 point of law.

18 COMM. JACKSON: Does that point back
19 to the notification being given?

20 MS. RYKER: Uh-huh.

21 COMM. JACKSON: So, let's not
22 downplay any of these. All four are important.
23 If we're going to sit here for 15 minutes and



1 listen to it, all four of them are important. I
2 think that, you know, it's subjective to say that
3 it's blown out of proportion and it's not
4 important. I think every single one of these
5 concerns is important.

6 And in my mind, if you're not giving -- if
7 you're not given notification about something,
8 that's a big deal. I need to know. I need to
9 know something's going to happen that affects me,
10 and I think it's fair to the people who live in
11 this state, that if something's going to happen
12 that affects you, you should be notified about
13 it. And they're depending upon people who are in
14 charge of government to make sure that happens.

15 So, that first issue, that they have a
16 right to an appeal, and then, of course, if they
17 were not notified, there seems to be some
18 ambiguity in the law on one hand, and you give us
19 an example, and Judge Burkhardt says, "Well, I
20 mean there's another issue over here." So, if
21 we're supposed to notify them -- and I'm still on
22 that -- and we didn't, and by law we should have,

23 then they have a right to appeal, and if they

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1 have a right to appeal, then we should give them
2 that, I think.

3 COMM. BLACKBURN: Can we have a
4 response from our ALJ to that crucial issue
5 before we deal with the other three?

6 JUDGE BURKHARDT: Yes. I take
7 very -- with fear and trembling the role of being
8 your appointed ALJ, and know that my duty is,
9 first and foremost, to not only promote timely
10 justice, but uphold the due-process rights of all
11 parties through this forum who have not gone to
12 State Court, but have chosen this executive
13 administrative forum.

14 Parties are entitled to due process and
15 entitled to notice. When I issued my decision, I
16 was not the ultimate authority, as I'm not now,
17 which is why it's required that I state and
18 updated this to be accurate, so I can state to
19 the parties administrative review of this
20 decision may be obtained. That's administrative

21 due process. Parties have been notified, they
22 have the statutory ability to object. That's a
23 due process right to -- yes.

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1 COMM. BLACKBURN: With all due
2 respect, do you think that that statement
3 adequately conveys that the public has the right
4 of appeal?

5 JUDGE BURKHARDT: Well, it was
6 admitted that they don't, under the -- Indiana's
7 Fair Housing Act and it's applicable
8 Administrative Code. That statement's agreed by
9 all. The disagreement is as to whether you
10 should import the Civil Rights Law, which came
11 far before the Indiana Fair Housing Act, in
12 due-process cases.

13 The Fair Housing Act chooses to do so in
14 some instances, not in others. Here is one where
15 it's not explicit. You're being asked to bring
16 this into this statute from this one.

17 COMM. BLACKBURN: We don't have the

18 language.

19 CHAIRPERSON HARRINGTON: So, I guess
20 my question is, I know we have the two laws that
21 govern us. This is all based on the Fair Housing
22 Act; correct?

23 JUDGE BURKHARDT: (Nodded head yes.)

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1 CHAIRPERSON HARRINGTON: Can it be
2 reviewed under the Civil Rights Act, which allows
3 for an appeal? And if so, how do we do that?
4 Because in the spirit of due process, I felt like
5 that's what you're asking for. So, instead of
6 debating on what is and what is not law as it
7 relates to Fair Housing, we've got two laws. One
8 law allows for the appeal. What can be done
9 using the Civil Rights Law, independently of this
10 or in conjunction with it?

11 MR. WILSON: Let me explain. That's
12 why we're going to get clarification in this
13 whole thing, and this is why I asked them to move
14 forward.

15 COMM. RAMOS: Hey, Sheryl, you might

16 want to go on mute. Comm. Edwards?

17 COMM. EDWARDS: Yes.

18 COMM. RAMOS: You might want to go on
19 mute. We're getting a lot of background noise.

20 COMM. EDWARDS: Pardon me. I didn't
21 understand what you just said.

22 COMM. RAMOS: Can you go on mute?

23 COMM. EDWARDS: No, I'm not on mute.

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1 I think --

2 COMMØ. RAMOS: Can you go on it?

3 COMM. JACKSON: Just tell her to mute
4 it.

5 Mute your phone, please.

6 CHAIRPERSON HARRINGTON: Can you mute
7 your phone? There's a lot of background noise.
8 There we go. Thank you very much.

9 MR. WILSON: Let me explain, and
10 maybe this will help clarify, because you got to
11 a great point. What happened was, is -- again,
12 is, as I told you, we've come into the agency,

13 and we've been looking at all of the processes,
14 trying to correct process. What used to -- what
15 happened, and this is why, when Caroline said
16 precedence, what has happened in the past, here's
17 what the past has done.

18 So, in previous cases, the Deputy Director
19 would -- and this is a pattern that we saw --
20 would put one word for both cases, meaning both
21 cases, they took them and included them, and
22 that's what she did in one word. Instead of her
23 doing it separately the way she should, or they

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1 had done -- should do --

2 CHAIRPERSON HARRINGTON: You're
3 reviewing for civil rights and --

4 MR. WILSON: They were -- yeah, they
5 did both off of them, and she -- they would put
6 them there, and they did that forever. That is
7 how they did those cases, they would just take
8 and put like for one -- for both, when they
9 should have did maybe a different -- they should
10 have did it a different way.

11 And we've corrected that process, but that
12 was the process during that time, and so it would
13 be unfair and unjust to say that based on the
14 fact is -- this is how the cases were turned in
15 to the Commission, and the fact that they had
16 linked them together as one statement instead of
17 showing both, saying both of these were
18 separately -- kind of this law and this law, they
19 just did this, and it was both cases.

20 You can't hold -- what we say is: You
21 can't hold the Complainant responsible for a
22 process that wasn't accurate, even though they
23 were saying both cases. That was the pattern.

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1 When they turned it in to the Commission, they
2 turned them in as both cases under one statement
3 instead of doing that. And I think that the
4 Administrative Law Judge looked and said, "Hey,
5 it's two different things" -- and hopefully --
6 I'm not trying to speak out of turn -- but "two
7 different things. They only show this one.

8 But the pattern was, is that when the
9 Director turned those things in, it was both
10 cases signed this way, but in actuality, they
11 should have stated them as separate laws and said
12 that under these laws, they both should be
13 included.

14 That was a process of error on our part;
15 I'm not holding the Claimant to that. And that's
16 why, as a sort of point, you have to -- for us,
17 to make sure that we treat -- you can't mistreat
18 the Claimant for how we did the process.

19 COMM. RAMOS: And there's also a gray
20 area in between what part of this is really HUD;
21 right, or Housing versus -- particularly in this
22 case -- what is Civil Rights?

23 MR. WILSON: It was the Indiana laws,

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1 though, that they should have approved both laws,
2 used both laws in the case, and that's what that
3 signature did, because that's the way they did
4 all of the cases, the same way.

5 MS. RYKER: And if I can add to that,

6 speaking directly to your question, Commissioner,
7 between the Indiana Civil Rights Law and the
8 Indiana Fair Housing Act, specifically where the
9 Administrative Law Judge and the Complainant
10 disagree, the Indiana Civil Rights Law and the
11 Indiana Fair Housing Act are two separate laws.

12 CHAIRPERSON HARRINGTON: Uh-huh.

13 MS. RYKER: It is Complainant's
14 position that when the Indiana Civil Rights Law
15 says -- or excuse me -- when the Indiana Fair
16 Housing Act says that it is administered by the
17 Indiana Civil Rights Commission, this is what
18 allows the Indiana Civil Rights Commission to use
19 that procedure from the Indiana Civil Rights Law.

20 The Administrative Law Judge -- and
21 correct me if I'm wrong -- takes a different
22 position, that there is no link procedurally
23 between those two laws. So, he sees them as two

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1 separate, entirely distinct laws.

2 Complainant's position is that you can use

3 some procedure from the Indiana Civil Rights Law
4 and the Indiana Administrative Code, because the
5 Commission administers it. And under Indiana
6 Law, generally words are given their plain
7 meaning, and "administer," according to the
8 Merriam-Webster's Dictionary, is "to manage,
9 supervise, execute, use, or conduct of." And so,
10 when I reviewed that term "administer," it seems
11 to suggest that it would include process and
12 procedure.

13 CHAIRPERSON HARRINGTON: And that's
14 why I was asking my question of there's an
15 interpretation of the law, so trying to get that
16 clarification from what we've done historically,
17 to clarify if that is appropriate under the law,
18 or were there -- is there -- is there an issue
19 with the interpretation?

20 And based on this -- so, we've got the
21 Civil Rights and the Housing. What I think I
22 hear you saying is historically, they were lumped
23 together, so I don't know how they used Civil

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1 Rights versus Fair -- Fair Housing. One decision
2 was made. If I'm accurate, under Civil Rights,
3 you can appeal; under Fair Housing, you cannot.

4 So, if Fair Housing was the dominant
5 piece, someone would never be able to appeal, and
6 on Civil Rights, they always could, and that was
7 the standard process. In this case, it feels as
8 though it was tagged Housing, but can we initiate
9 a review from a Civil Rights standpoint that
10 would allow an appeal?

11 In addition to that, while it was under
12 Fair Housing, as the Commission, we took a
13 misstep, is what I hear, in reversing it, where
14 the Housing said we didn't have that authority,
15 but we took it, and it wasn't brought up at that
16 time, and that's a question that is also on the
17 table --

18 COMM. RAMOS: Right.

19 CHAIRPERSON HARRINGTON: -- is: Did
20 we have authority to reverse when under the
21 Housing, we couldn't appeal? So, that's what I'm
22 hearing. So, it's a lot of process. That's why
23 I was saying I would like to take it away and

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1 make sure we understand. The more important part
2 is the case itself. I've heard it was settled.
3 So, what is the impact to -- I heard a \$7,000
4 settlement and some other things. Has that
5 person received that?

6 MS. RYKER: Yes, Commissioner. For
7 the impact on this case, there's really not much
8 impact.

9 CHAIRPERSON HARRINGTON: To the
10 person?

11 MS. RYKER: To the individual person.
12 She was a settlement. Respondent has, even
13 during this process, continued to move forward in
14 meeting those settlement agreement terms. The
15 real impact of this case will be on other cases
16 moving forward, which is why Complainant felt it
17 was important to continue to pursue it.

18 CHAIRPERSON HARRINGTON: Okay. So,
19 it is our interpretation of the law and process
20 moving forward that we need to determine;
21 correct?

22 COMM. BLACKBURN: (Nodded head yes.)

23 CHAIRPERSON HARRINGTON: And it's --

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1 does the Civil Rights Law, as it relates to
2 appeals, apply to the Fair Housing Law is the
3 question; is that fair?

4 MS. RYKER: Yes, sure.

5 CHAIRPERSON HARRINGTON: And so, my
6 question to the Commissioners is: Are you
7 prepared today, based on what you heard, to make
8 a decision? Because this is going to govern how
9 we proceed moving forward. And so, we'll either
10 be saying they are two separate, or that the
11 Civil Rights right to appeal applies to the
12 Housing, and we would have to say provide the law
13 that supports -- the rationale that supports
14 that.

15 COMM. RAMOS: Vice-Chair, you did a
16 great job of articulating the problem. Thank you
17 very much. The question I have is: What is the
18 impact on that? So, let's -- we have two
19 scenarios here. What are the scenarios and how

20 do they play out? Because if we make the
21 decision that we can in fact appeal Fair Housing
22 scenarios, what does that mean? I mean because
23 it could be from fair Housing's standpoint that

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1 now we're going to get a whole lot of -- and I'm
2 not trying to -- I'm trying to understand; right?
3 So, I just -- can we get some sense of what that
4 impact means, either Judge or Deputy Director or
5 Director?

6 MS. POSEY: So, I apologize for the
7 parts that I've missed. I had another thing that
8 I had to attend to, so if I repeat something
9 that's already been said, please stop me.

10 When we issue our notice of findings after
11 the investigation is complete, in the past, it's
12 always said -- if it was a Housing case, it had
13 always been said that "We find no reasonable
14 cause" or "We find reasonable cause," because the
15 bigger issue in that case was the -- under the
16 Housing Act. The allegations are brought under

17 the Housing Act and the Civil Rights Act, but for
18 whatever reason, the notice of findings just
19 said, "We find no reasonable cause."

20 So, my interpretation is that when we say,
21 "We --" or, you know, "the Complainant brings
22 allegations under both the Indiana Civil Rights
23 Act and the Indiana Fair Housing Act,"

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1 blah-blah-blah-blah-blah, "we find no reasonable
2 cause," my interpretation is that we find no
3 cause under all of the acts that the person was
4 alleging discrimination.

5 So, that's how it had always been probably
6 since the Indiana Fair Housing Act was enacted
7 back in the early 1990's. So, from then until
8 now, if anyone appealed their housing matter,
9 they did so.

10 CHAIRPERSON HARRINGTON: Because they
11 could appeal.

12 MS. POSEY: They appealed it to the
13 Commission from -- from whenever we started the
14 appeal process until now; right? It's always

15 been a part of what we've done here. The Indiana
16 Fair Housing Act is silent on the appeal process,
17 but it doesn't say you cannot appeal an Indiana
18 Fair Housing case. So, we took that as --

19 CHAIRPERSON HARRINGTON: You can
20 appeal.

21 MS. POSEY: -- you can appeal it.

22 CHAIRPERSON HARRINGTON: You can or
23 cannot?

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1 MS. POSEY: You can.

2 CHAIRPERSON HARRINGTON: Okay.

3 MS. POSEY: So, that's how it's
4 always been interpreted from day one; right? And
5 it always depended upon your interpretation, so
6 depending on the Commissioners that we have on
7 board, depending on the General Counsel that we
8 have on board, depending on the Administrative
9 Law Judge that we have on board, interpretations
10 of the law are subjective; right, in a sense?

11 So, what we've gathered in this past year

12 is that there is ambiguity between the two laws
13 in terms of what you can and what you can't do,
14 what is required and what is not required, and in
15 the attempt to clear up some of that ambiguity,
16 I've changed the notice of findings to now say,
17 "We find no probable cause," and "We find no
18 reasonable cause," to show that the person
19 brought allegations under both statutes, so we're
20 going to use both words, "reasonable" and
21 "probable," to make that distinction, to make
22 that less ambiguous; right?

23 CHAIRPERSON HARRINGTON: Uh-huh.

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1 MS. POSEY: But we still are left
2 with the appeal. So, if there is a no-probable
3 and no-reasonable-cause case in Housing, that
4 person appeals it, then what is the
5 interpretation from the Commission, from the ALJ,
6 if we are only appealing the -- under the Indiana
7 Civil Rights Act or under the Indiana Fair
8 Housing Act?

9 If you only appeal under the Indiana Civil

10 Rights Law, then you are -- there's a smaller
11 amount of statutory law that you can look at in
12 order to litigate the Housing case under the
13 Indiana Civil Rights Law. Under Indiana Fair
14 Housing Act, it lists out tons and tons of
15 different ways that you can find discrimination.
16 So, if we're appealing, then we're only appealing
17 the case under a limited amount of legal
18 argument.

19 CHAIRPERSON HARRINGTON: Today.

20 MS. POSEY: For all cases moving
21 forward, if that's the interpretation of the
22 Commission, that if you appeal a Housing case and
23 you can only appeal under the Indiana Civil

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1 Rights Law, these are the things that you can
2 argue.

3 CHAIRPERSON HARRINGTON: Uh-huh.

4 MS. POSEY: If you say you can appeal
5 under the Indiana Fair Housing Act and the
6 Indiana Civil Rights Law, you've got the Civil

7 Right Law and you've got the Fair Housing Act
8 behind you in litigation. So, because the
9 Civil -- the Fair Housing Act is silent, our
10 interpretation historically has been they're both
11 appealable, "do your thing."

12 It's up to the Commission today to make
13 that determination moving forward, and I would
14 also advise the Commission to issue a memo, a
15 memorandum, to our staff, letting us know what
16 your position is on Housing cases that are
17 appealed under the Indiana Civil Rights Law and
18 the Indiana Fair Housing Act.

19 CHAIRPERSON HARRINGTON: So, anybody
20 have questions?

21 MS. POSEY: And that is in the
22 proposed order.

23 COMM. BLACKBURN: Would you speak,



1 please, to the impact on two different areas?
2 The one, obvious one, is the lack of recourse the
3 public would have to a decision coming from the
4 Civil Rights Commission about their Housing

5 situation. And the other is the impact
6 internally on the agency and the vast number of
7 cases filed that are Housing cases, including
8 those, many, that we get from EEOC and HUD and
9 anywhere else.

10 MS. POSEY: Uh-huh. Great questions.
11 So, the first answer to that is: What is the
12 impact moving forward for the -- for the public?
13 So, going -- kind of going back to the big versus
14 little, if a case is appealed, a Housing case is
15 appealed, and you -- and you overturn the no
16 cause to a cause and it goes back to the
17 administrative realm, then if you leave the
18 interpretation as we can only appeal the Indiana
19 Civil Rights Law, then there is -- it's going to
20 be difficult, more difficult, for a complainant
21 to win a case.

22 MS. RYKER: And I'd like to add to
23 that, too, that if -- you have to look at the

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1 statute of limitations for these types of cases

2 as well. For the Indiana Civil Rights Law, you
3 only have 180 days.

4 MS. POSEY: Oh, yeah.

5 MS. RYKER: For a case under the
6 Indiana Fair Housing Act, you've got a full year.
7 So, you could have the exact same person with the
8 exact same complaint at 181 days and they'd have
9 no right to appeal, but if they filed one day
10 earlier, they'd have a right to appeal, which is
11 different.

12 And as far as what that could look like
13 moving forward, HUD's position on not having the
14 right to appeal is that that person can always
15 file in State Court or can refile the exact same
16 complaint with the Indiana Civil Rights
17 Commission, but with new evidence.

18 One of the differences of our Commission
19 is that we also have this public policy goal of
20 protecting respondents of unfounded complaints of
21 discrimination. So, instead of having
22 respondents litigate something that's failed in
23 our Indiana Civil Rights Commission in court,

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1 we'll refile the same complaint and face that
2 issue here again.

3 The appeals process makes sure that
4 everyone feels secure in that decision, that when
5 it's done, it's really done, from the State of
6 Indiana's perspective.

7 CHAIRPERSON HARRINGTON: I have a
8 question, and it's to the Director. Based on
9 your understanding, the current practice, do you
10 feel that it has had an adverse impact to the
11 public?

12 MR. WILSON: I think currently what
13 we've been doing prior to this case, I think it's
14 worked in favor of the public. What I worry
15 about is, again, is that if we change to limit,
16 that limits the justice for some, for a lot of
17 people, and it will have impact. I think it will
18 have impact on the average citizen to get a fair
19 opportunity to appeal.

20 So, for what I feel now, like Doneisha
21 said, she's made changes, so that'll work, but I
22 just think that we have to be very careful,
23 because the whole point in the Civil Rights is to



1 make sure that people's rights are protected,
2 that they have a fair opportunity, what's the
3 best interest of the State of Indiana? And so,
4 again, I do worry about the impact that it's
5 going to have.

6 COMM. RAMOS: Rights on both sides.

7 MR. WILSON: On both sides, of
8 course, it's on both sides, but --

9 COMM. BLACKBURN: I think in addition
10 to what you've just stated, there is considerable
11 dependence in public perception that at the Civil
12 Rights Commission, they will receive fair
13 treatment and an opportunity to appeal, and to
14 show up at the State Fair and anywhere else and
15 promoting the Civil Rights Commission, and then
16 have a proviso that states, "Oh, by the way, you
17 should know if your case falls into a Housing
18 category case, your time frame and your outcome
19 will be negatively impacted."

20 JUDGE BURKHARDT: May I please

21 provide a comment? The Indiana Civil Rights
22 Commission has been enforcing the Indiana Civil
23 Rights Law since 1965 as it pertains to Housing.

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1 The Indiana Civil Rights Law itself provides
2 Housing protections.

3 COMM. BLACKBURN: What did you say?

4 JUDGE BURKHARDT: The Indiana Civil
5 Rights Law itself provides Housing protections,
6 broader than the Indiana Fair Housing Act, due to
7 the lack of exemptions. The Indiana
8 Administrative --- the Indiana Civil Rights
9 Commission's Administrative Law Judge is, in
10 part, appointed due to technical expertise,
11 having served in the Legal Unit, the
12 Investigative Unit, the ADR Unit, and now as
13 Judge. I wish I could agree. I unfortunately
14 disagree that this past practice of only
15 mentioning one phrase, "no reasonable cause," was
16 actually a wise attempt to apply both laws at the
17 same time. I disagree with that contention.

18 I think that bringing that to this

19 situation and all future ones after the fact is a
20 failure to remedy a problem which should be
21 remedied, which is an unfortunate manifest
22 conflation of two laws, to the point where the
23 ALJ has to entertain parties', respondents'

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1 sometimes, motions to dismiss a case because ICRC
2 has committed fraudulent concealment, because
3 parties are so confused by a process sometimes
4 due to conflated terms, conflated notices,
5 notices from one law when in fact the other law
6 applies. I wish I hadn't seen all of that, but
7 in fact it can be remedied.

8 And the only security forward is not
9 trying to dress up this past practice as well it
10 was confined all along, but is in fact the
11 securities in the law itself. Everyone agrees,
12 the Indiana Fair Housing Act and its
13 Administrative Code, the Code which administers
14 it, unless explicitly stated otherwise, does not
15 contain appeal rights. That is their total

16 agreement on that.

17 And when the Court of Appeals addresses
18 the ultimate authority's decisions, deference is
19 given on findings of fact, because you get to --
20 there's witnesses and evidence received and it
21 touches your hands. The Court defers to you as
22 the fact-finder. The Court is very explicit and
23 passionate about how it does not defer on

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1 conclusions of law.

2 So, if you decide to find that a law which
3 does not state something does in fact incorporate
4 something from another law, I would only expose
5 your lia -- I would only mention your exposure or
6 your liability to a Court of Appeals finding that
7 your conclusions of law, your conclusions that
8 you can read into this statute something which is
9 not explicitly there, is entitled to no deference
10 as a conclusion of law itself. That's my
11 concern.

12 MS. POSEY: That's fair, but this has
13 been a practice since 1990, around that era, and

14 I would -- I would love for the Court of Appeals
15 to weigh in on this if a case ever goes up to the
16 Court of Appeals, but I mean it's been this way
17 since -- I don't want to be a person that says,
18 "It's been this way this whole time, so let it
19 stay that way," but in the interest of public
20 policy and our -- the biggest goal that we have
21 in this agency is to provide the service. Your
22 interpretation of how we interpret our statute is
23 your interpretation.

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1 MS. RYKER: And I would like to just
2 briefly respond that Complainant's position is
3 that this term "administered" does create a
4 handshake between these two laws, that that is
5 the explicit statement of the law that does
6 provide some legal basis for these two laws being
7 procedurally not substantively connected.

8 And there is case law, including Martin
9 versus Occupational Safety and Health Review
10 Commission from the United States Supreme Court,

11 that gives some deference to agencies in
12 interpreting their own law. The Court stated
13 that "Our decision and the agency's litigation
14 positions are not entitled to deference when they
15 are merely appellate counsel's post hoc
16 rationalizations advanced for the first time by a
17 reviewing court."

18 But the Court went on to determine that
19 "The Secretary's interpretation of OSHA's Act
20 regulations in an administrative adjudication,
21 however, is an agency action, not a post hoc
22 rationalization of it." That would include your
23 original decision on the appeal.

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1 "Moreover, when embodied in a citation,
2 the Secretary's interpretation assumes a form
3 expressly provided for by Congress...although not
4 entitled to the same deference as norms that
5 derive from the exercise of the Secretary's
6 delegated lawmaking powers, these informal
7 interpretations are still entitled to some weight
8 on judicial review."

9 JUDGE BURKHARDT: I would just state
10 that nonetheless, unless explicitly departing
11 from the law, nothing -- the Indiana Civil Rights
12 Commission case, which I said is controlling,
13 states, "Nothing may be read into a statute which
14 is not within the intention of the legislator as
15 ascertained." You get to ascertain from the
16 plain and obvious meaning of the words in the
17 statute.

18 I just think that the words control in
19 this case, which is why I think the notice has
20 been revised to state there is neither reasonable
21 nor probable cause. I think that's great, but I
22 don't think ratifying a past practice, no matter
23 how old, will give justice to those whose Housing

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1 complaints could have been appealed explicitly
2 under the Civil Rights Law.

3 I think people deserve to know that both
4 laws have been administered to their complaint,
5 because both laws have different exemptions and

6 both laws have different rights in terms of
7 election, and you can't apply them both at the
8 same time without -- to the same -- you can't
9 apply them at the same time when they have
10 contradictory provisions unless you're going to
11 bifurcate the case.

12 MS. POSEY: Speaking -- I'm sorry.

13 JUDGE BURKHARDT: That's fine.

14 MS. POSEY: Speaking of elections,
15 when there is a Housing case that we find
16 probable under the Indiana Civil Rights Law and
17 reasonable cause under the Indiana Fair Housing
18 Act, we find cause, the parties have the right to
19 elect to go to State Court, to be removed from
20 the administrative proceeding.

21 Under the Indiana Civil Rights Law, both
22 parties have to elect, both sides have to elect.
23 There's a -- there's provisions that say how much

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1 time they get, where they elect to, who they need
2 to serve, all of those, under the Indiana Civil
3 Rights Law, the law that governs the Indiana

4 Civil Rights Law.

5 Under the Indiana Fair Housing Act, the
6 Administrative Code states that only one party is
7 necessary to remove themselves from the
8 administrative proceeding into State Court.

9 So -- and HUD's interpretation of that is, "We
10 want to make the process easier for the parties,"
11 if they would like to be removed from -- whether
12 it's HUD's administrative process or an agency
13 like ours.

14 So, that's why we have that similar
15 language that Title 8 has in terms of electing
16 for Housing, so only one party has to elect. If
17 there is a case that is found probable and
18 reasonable and one of the parties would like to
19 elect, then under this rationale, then we have
20 two hearings going on.

21 If only one party elects, then they're
22 going to be in whatever county that they're from,
23 Marion County Superior Court, ICRC versus, you

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1 know, such-and-such property, because one pers --
2 one party elected and they are guaranteed those
3 rights under the Indiana Fair Housing Act. But
4 the Indiana Civil Rights Law allegations would
5 not be moved to State Court. That -- both
6 parties would have to elect to do that.

7 So, we have two different cases going on
8 under the same issues, doubling up the resources
9 needed to adjudicate a claim, whereas past
10 practice has been if someone has elected to go to
11 State Court under the Fair Housing Act, if there
12 was a Fair Housing Act issue, then everything
13 went with it. So, there -- that's another issue
14 that this would kind of bring up.

15 JUDGE BURKHARDT: May I just briefly
16 respond?

17 COMM. BLACKBURN: Well, the HUD
18 Conference in October is going to be heated.

19 MS. POSEY: No, it's not, not on
20 this.

21 CHAIRPERSON HARRINGTON: If we can
22 do -- so, for sake of time, if --

23 JUDGE BURKHARDT: Sure.

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1 CHAIRPERSON HARRINGTON: -- you can
2 make a comment, and then I'll --

3 JUDGE BURKHARDT: Sure.

4 CHAIRPERSON HARRINGTON: -- ask the
5 pleasure of our Commissioners on how we want to
6 proceed.

7 JUDGE BURKHARDT: Thank you.

8 I totally agree with that assessment, and
9 appreciate it. Yes, if we apply both laws,
10 sometimes that means maybe double resources, but
11 the belief here is that parties are entitled to
12 the administration of both laws to all complaints
13 where possible.

14 That's the issue. There's no necessary
15 additional proviso that says you don't get to
16 appeal. This is stating where it says -- where
17 one says you may appeal, one says you can't, we
18 apply them both, and in fact if then there's an
19 election forum or whatever, we go all of the way
20 for people we serve on both -- under both laws.

21 And no matter how inconvenient, if a
22 complainant is removed by a respondent to State

23 Court on their Fair Housing Act claims, they're



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1 entitled to stay here for their Civil Rights Law
2 claims. That's our -- that's our founding laws.

3 I think it's a matter of whether we can
4 read into the statute something from another
5 statute that we also happen to administer, or
6 whether, like the law with which it's
7 substantially equivalent, the Fair Housing Act,
8 on purpose, didn't mention its importation of
9 rights not explicit there. By agreement of all
10 parties, they're not there.

11 CHAIRPERSON HARRINGTON: All right.
12 I'd like to ask: Are there any additional
13 comments from our Commissioners on this? And
14 then I wanted to propose something.

15 COMM. BLACKBURN: Yes, a short
16 question, I think. How much reliance on -- two
17 questions. How much reliance on the intent or
18 intention of the law weighs in either approach?
19 And secondly, having relied in great measure on

20 precedent and process over the years, how many
21 cases that have gone to the Court of Appeals have
22 been cited for some neglect of adherence to the
23 letter of the law?

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1 JUDGE BURKHARDT: I'll be happy to
2 address those as briefly as possible. If I could
3 answer the second one first, that is a reference
4 to the fearful legacy of any ICRC ALJ coming in
5 to work to find the Court of Appeals and Indiana
6 Supreme Court have not often been happy with
7 departures from due process rights of the parties
8 or from reading something into the law when it's
9 not there. The ICRC itself has dealt with these
10 issues in the Court and has its own precedent,
11 just along the line of whether we will administer
12 the Code as written.

13 COMM. BLACKBURN: How frequent? How
14 much? How many?

15 JUDGE BURKHARDT: Enough that it
16 scares me into the letter of the law as my only
17 security to give you the decisions that you can

18 affirm confidently.

19 MS. RYKER: If I can speak to that, I
20 believe that this particular issue is an issue of
21 first impression for both the Commission and for
22 any Court of Appeals on this particular issue of
23 law that's been raised.

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1 As far as the intent of the legislature,
2 as I cited earlier, the Indiana Civil Rights
3 Commission versus County Line Park, one of the
4 tenets of statutory construction is to look at
5 the intent of the legislature, but also recognize
6 that the legislature would never intend something
7 that's unfair. So, even if the intent of the
8 legislature was an unfair result, the Court will
9 reverse, kind of backdate the intent, to be maybe
10 the way it should have been, but specifically to
11 make sure that the laws are fair.

12 CHAIRPERSON HARRINGTON: All right.

13 JUDGE BURKHARDT: And on the
14 intention question, may I briefly comment on the

15 intent question?

16 CHAIRPERSON HARRINGTON: Uh-huh.

17 JUDGE BURKHARDT: That's the quote I
18 was reading, "The intent is manifest in the plain
19 and obvious meaning of the words in the statute."
20 Here, it's agreed, as set forth to you, a statute
21 does not mention appeal rights when one does. I
22 find security in seeing the intent there. The
23 legislature's intent -- oftentimes courts say,

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1 "Well, when something is not mentioned, it
2 doesn't mean something is read into it
3 necessarily," especially in a law which sometimes
4 does import through explicit language, not a law,
5 but then chooses not to do so in other
6 situations. I think the intent is clear.

7 MS. POSEY: At this point, we have
8 different interpretations, and I understand where
9 everybody's coming from, but neither the
10 aggrieved person nor the Respondent brought this
11 up as an issue, and I would love for someone who
12 is aggrieved in this process, whether they were

13 the actual aggrieved person who the alleged
14 discrimination happened to them or the Respondent
15 on the other side, to bring this up and take it
16 upon themselves to bring it up on appeal to the
17 Court of Appeals, so that we can have some
18 precedent from the Court of Appeals to continue
19 with.

20 So, at this point, I would love for the
21 Commission to let us know -- or to confer and to
22 let us know how we should deal moving forward at
23 this level, moving forward with these cases.

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1 CHAIRPERSON HARRINGTON: Okay. Were
2 there any other comments from our Commissioners?

3 (No response.)

4 CHAIRPERSON HARRINGTON: So, I don't
5 want to make a decision in haste, and we are kind
6 of at our time. What I would like, so that we
7 can make a decision, and I'm looking -- I would
8 feel the best thing to do is at the next meeting
9 is make sure we clarify on what specific

10 information and clarification we need.

11 So, I'll try to articulate what I think we
12 need in as concise manner as possible, preferably
13 as soon as possible, so that we can have time to
14 review, and if we need to communicate between
15 ourselves, we'll have an opportunity before the
16 next meeting, is clarification on what the
17 recommendation is from the Executive Director
18 moving forward, and then clarification on how
19 that deviates from our current practice.

20 From the ALJ, I would like any concerns as
21 it relates to law and what is being -- you feel
22 is being interpreted, so that we have a clear
23 view of what we have been doing, what we want to

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1 do moving forward, and what the concern is as it
2 relates to law, to put us in a good position to
3 provide insight and confer.

4 And I think the only additional piece that
5 Comm. Blackburn brought up is if there is any --
6 any numbers you can provide us from an impact
7 standpoint to date, that would, I think, be most

5 COMM. JACKSON: Well, you weren't in
6 here when he was talking.

7 MS. POSEY: Okay.

8 MR. WILSON: We were talking about
9 the -- for instance, this particular case, and
10 example -- yeah, no, I'm -- I'll explain this so
11 Doneisha will understand, how that they would
12 take and sign, but she references both laws in
13 her -- our General Counsel referenced both laws,
14 even though it wasn't done the way Doneisha has
15 changed it to do, where you're kind of saying,
16 "Hey, this law and this law applies," but at that
17 particular time, that's what they did, they
18 referenced both laws, the Deputy Director did.

19 MS. RYKER: I believe during that
20 practice, though, there was still a question of
21 jurisdiction taken on by the investigator, so the
22 Indiana Civil Rights Law jurisdictionally didn't
23 apply, because of that statute of limitations it

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1 would be included; is that correct?

2 MS. POSEY: Yes.

3 MS. RYKER: Is that fair?

4 MR. WILSON: Yeah.

5 COMM. JACKSON: So, then what you're
6 saying is it needs to be fixed. The laws
7 applicable to this issue should be applied to it,
8 and the laws applicable to this issue should be
9 applied to it, as I understand it, in a nutshell.

10 JUDGE BURKHARDT: Yeah, both laws
11 should be applied to their fullest extent to all
12 cases.

13 COMM. JACKSON: Right.

14 JUDGE BURKHARDT: But sometimes it's
15 both at the same time, which proper notice to
16 parties would require explicit language when
17 doing so.

18 COMM. JACKSON: So, when I was in
19 aviation, the inspectors would come out and they
20 would look at the log books to determine if an
21 aircraft was airworthy.

22 CHAIRPERSON HARRINGTON: Uh-huh.

23 COMM. JACKSON: And I remember an

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1 inspector saying, "Well, this logbook has been
2 pencil-whipped. It is just, you know,
3 pencil-whipped." And you have a lot of aircraft
4 up there that really shouldn't be up there, but
5 somebody just pencil-whipped it.

6 CHAIRPERSON HARRINGTON: Uh-huh.

7 COMM. JACKSON: And I think it's
8 important for us to get back to adhering to the
9 law --

10 CHAIRPERSON HARRINGTON: Uh-huh.

11 COMM. JACKSON: -- and the law as
12 written. Now, there may be a judge who grants an
13 exception or says, "Here's what the law says, but
14 I'm going to give you a break," or something like
15 that.

16 CHAIRPERSON HARRINGTON: Okay.

17 COMM. JACKSON: But procedurally and
18 where process is concerned, if there is an issue
19 that can be remedied, then we can fix it, and it
20 may require more work. And I remember years ago
21 there was a guy who had insurance he supplied for
22 people traveling overseas, and after 911 his
23 business went down. He was a multimillionaire,

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1 but as a result of that, his business went down.
2 So, I asked him, I said, "Well, what are you
3 going to do now?" He said, "I'm going to work
4 harder." That was 20 years ago. He said, "I'm
5 going to work harder."

6 So, I think it's incumbent upon us, if
7 it's to be fixed, the impact may mean more
8 resources and people have to work harder. That's
9 what you have to do. That's just my two cents,
10 anyway.

11 COMM. BLACKBURN: I've got a
12 question.

13 CHAIRPERSON HARRINGTON: Okay.
14 Commissioner.

15 COMM. EDWARDS: Commissioners, this
16 is Comm. Edwards. I need to go. Do we need to
17 vote on anything else before I hang up?

18 COMM. JACKSON: No.

19 CHAIRPERSON HARRINGTON: No, we are
20 not going to have a vote today, and so,
21 Comm. Edwards, thank you so much for calling in

22 this week and coming in last week.

23 COMM. EDWARDS: Okay. Very good.

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1 All right, then. You all take care. Have a
2 great weekend.

3 CHAIRPERSON HARRINGTON: You do the
4 same.

5 MR. WILSON: Take care.

6 COMM. EDWARDS: Uh-huh. Bye-bye.

7 CHAIRPERSON HARRINGTON: Bye.

8 Comm. Blackburn?

9 COMM. BLACKBURN: If philosophically,
10 John, you agree that both the Fair Housing Law
11 and the Civil Rights Laws should apply
12 simultaneously to cases that we review, what is
13 the issue?

14 MS. RYKER: So, my understanding is
15 that ALJ Burkhardt believes that they both apply,
16 and please correct me if I'm misstating this --

17 JUDGE BURKHARDT: Okay.

18 MS. RYKER: -- but separately, so

19 that the Indiana Fair Housing Act applies without
20 the right to appeal a no-reasonable-cause
21 finding, and the Indiana Civil Rights Law applies
22 with the right to appeal. But the Complainant's
23 position is that both the Indiana Fair Housing

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1 Act and the Indiana Civil Rights Law include a
2 right to appeal.

3 COMM. BLACKBURN: Okay.

4 COMM. JACKSON: Which is not correct;
5 right?

6 COMM. BLACKBURN: So, what I stated
7 is that --

8 MS. POSEY: It's our interpretation
9 that --

10 COMM. BLACKBURN: -- you view --

11 COMM. RAMOS: Right.

12 MR. WILSON: Do you have the law?

13 MS. POSEY: That's our
14 interpretation.

15 COMM. BLACKBURN: Yeah.

16 CHAIRPERSON HARRINGTON: I don't have

17 it.

18 MR. WILSON: Doneisha, do you have
19 the laws? Do you have a copy of the laws?

20 MS. POSEY: And I know --

21 JUDGE BURKHARDT: It's in the legal
22 opinion.

23 MS. POSEY: I know Caroline had

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1 stated this earlier, but if we are to interpret
2 the Civil Rights Act alone and the Fair Housing
3 Act alone and the Codes underneath them to only
4 help each -- or to only work for its own, then
5 there's no mention of an Administrative Law Judge
6 in the Fair Housing Act, and the Commission would
7 have to adjudicate all Fair Housing Act cases
8 because there's no mention of it, or do we say
9 that the Administrative Law Judge is in the
10 Indiana Civil Rights Act and he is -- or the
11 Administrative Law Judge is to preside over all
12 Civil Rights cases and include -- and be included
13 in that?

14 JUDGE BURKHARDT: So, with a hundred
15 percent deference and all due respect for someone
16 I look up to, the Administrative Code does import
17 into the Fair Housing Act explicitly the
18 Administrative Law Judge provision. That's an
19 explicit importation. It is in there.

20 MS. RYKER: In the Administrative
21 Code, not in the law.

22 JUDGE BURKHARDT: Right.

23 MS. POSEY: Right.

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1 JUDGE BURKHARDT: That's the Code --

2 COMM. BLACKBURN: Did you say
3 "implicit" or "explicit"?

4 JUDGE BURKHARDT: There is explicit
5 importation of the ALJ provisions of one law into
6 the other. There is not an explicit importation
7 of the appeal. That's what was up for
8 discussion, so --

9 CHAIRPERSON HARRINGTON: So, the
10 piece that I don't know -- I personally am not as
11 familiar with this Administrative Code that --

12 so, we've talked about the Civil Rights Law and
13 the Fair Housing --

14 JUDGE BURKHARDT: Uh-huh.

15 CHAIRPERSON HARRINGTON: -- Act when
16 we did our training, the Administrative Code.
17 So, I just -- if I need to meet with somebody so
18 that we can provide what we need so we're sure
19 that we, one, understand everything that's
20 governing, because this part, that's the part
21 that's new that I'm not familiar with, that we're
22 saying that with the Fair Housing Act being
23 silent, we're adopting the Administrative Code,

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1 which pulls in the Civil Rights to appeal.

2 So, I understand the flow chart behind it.
3 I want to follow the law, and I don't have enough
4 information. And if any of my Commissioners are
5 more advanced than I am and can help with that, I
6 would love to meet with you outside, but that's
7 the piece that I'm asking for.

8 So, if the staff could come together and

9 kind of put together a briefing for us of what
10 the recommendation is and what the concern is,
11 then I think that puts us in a position where we
12 can defer and make a decision.

13 Anything else?

14 (No response.)

15 CHAIRPERSON HARRINGTON: All righty.
16 Hearing none, we'll close that issue out with
17 that recommendation, and what we had next were
18 Announcements. I don't know if there were any
19 staff announcements that needed to be made at
20 this time, other than enjoy the baseball game.

21 MR. WILSON: No, that's it.

22 CHAIRPERSON HARRINGTON: The future
23 meeting dates are listed. I don't know -- I'll

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1 open the meeting for any public comment at this
2 time, but I don't think there is anyone here.
3 So, hearing no comment, this meeting is
4 adjourned.

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6 Thereupon, the proceedings of
July 27, 2018 were concluded

CRC 7-27-18
at 3:14 o'clock p.m.
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CERTIFICATE

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I, Lindy L. Meyer, Jr., the undersigned

3

Court Reporter and Notary Public residing in the

CRC 7-27-18

4 City of Shelbyville, Shelby County, Indiana, do
5 hereby certify that the foregoing is a true and
6 correct transcript of the proceedings taken by me
7 on Friday, July 27, 2018 in this matter and
8 transcribed by me.

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11

Lindy L. Meyer, Jr.,

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Notary Public in and

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for the State of Indiana.

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15 My Commission expires August 26, 2024.

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