

ACTION: FINAL
FILED

DATE: 10/07/2002
08:50 AM

4112-3-03 **Preliminary investigation, probable cause, conciliation, no probable cause.**

- (A) Preliminary investigation. After the receipt of a charge, ~~or after a recommendation pursuant to rule 4112-3-02 of the Administrative Code or Chapter 4112. of the Revised Code, that a formal investigation be conducted,~~ the director or the director's designee may assign a member or members of the commission staff to conduct a preliminary investigation. Such investigation shall be designed to obtain necessary information upon which the commission can determine whether it is probable that any unlawful discriminatory practices have been or are being engaged in by the respondent. The investigation of any alleged unlawful discriminatory practices by the commission need not be limited to the particular facts or issues raised in any charge affidavit.
- (B) Probable cause determination. Where the facts indicate that it is probable that any unlawful discriminatory practices have been or are being engaged in, the director or the director's designee may refer the matter to the commission and recommend that the commission approve a finding of probable cause and authorize proceeding with conciliation. The commission may delegate authority to the director or the director's designee to make a finding of probable cause and issue a ~~probable cause~~ letter of determination and serve a copy upon the parties. ~~Such letter of determination shall be final when issued.~~
- (C) Conciliation. When the commission determines such probable cause does exist, the commission shall instruct the director or the director's designee to endeavor to eliminate all unlawful discriminatory practices by conference, conciliation and persuasion.
- (D) Conciliation agreement. If, as a result of conference, ~~and~~ conciliation, and persuasion the commission is able to provide for voluntary compliance with sections 4112.01 to 4112.08 of the Revised Code, and to effect the elimination of any unlawful discriminatory practices, whether against the complainant or others, it may prepare a conciliation agreement which shall set forth all measures to be taken by the parties thereto, including provisions for affirmative and other relief, goals and timetables, and compliance reports. The conciliation agreement shall be signed by the ~~respondent, the complainant~~ persons to be bound by the agreement, and a representative of the commission. An executed conciliation agreement is a final order of the commission for the purposes of section 4112.06 of the Revised Code.
- (E) Failure of conciliation. Failure by a respondent to agree to a proposed conciliation

~~agreement or to submit a counter proposal acceptable to the commission, within seven calendar days of being served by the commission with a notice of failure of conciliation,~~ shall constitute prima facie evidence of a failure, within the meaning of division (A) of section 4112.05 of the Revised Code, of informal methods of persuasion and conciliation conference, conciliation and persuasion.

- (F) No probable cause determination and dismissal. Where the facts, as determined during the ~~fact finding conference conducted pursuant to rule 4112-3-02 of the Administrative Code, by the~~ preliminary investigation ~~or during any subsequent endeavor at conciliation~~ indicate that it is not probable that any unlawful discriminatory practices have been or are being engaged in, the director or the director's designee shall refer the charge to the commission with a recommendation of dismissal. The commission may thereupon dismiss the charge and serve on the complainant and other ~~appropriate~~ parties notification of its action. The commission may delegate authority to the director or the director's designee to make a finding of no probable cause and issue a ~~no probable cause~~ letter of determination and serve a copy upon the parties. ~~Such letter of determination shall be final when issued.~~
- (G) Investigation without charge. When preliminary investigations are initiated by the commission on its own motion, no specific charge need be filed with the commission. The commission shall promptly notify the respondent in writing of such investigation.
- (H) Compliance reports. The commission may require any party to submit to it such compliance reports as the commission deems necessary showing compliance with the terms of any conciliation agreement.
- (I) Investigation after conciliation. The commission may make compliance investigations regarding conciliation agreements, ~~negotiated settlement agreements,~~ and cease and desist orders, and take appropriate action according to its findings, pursuant to paragraphs (B)(2) and (B)(3) of rule 4112-3-10 of the Administrative Code.
- (J) Non-disclosure. Nothing said or done during endeavors at conciliation shall be disclosed by any member of the commission or its staff to be used as evidence in any subsequent proceeding unless the respondent asserts that the commission's duty to attempt conciliation pursuant to section 4112.05 of the Revised Code has not been met. The commission may, however, publish the terms of conciliation of any charge which has been conciliated.

Replaces: 4112-3-03

Effective: 10/17/2002

R.C. 119.032 review dates: 8/1/2002 and 08/01/2007

CERTIFIED ELECTRONICALLY

Certification

10/07/2002 08:50 AM

Date

Promulgated Under: 119.03
Statutory Authority: 4112.04(A)(4)
Rule Amplifies: 4112.04, 4112.05
Prior Effective Dates: 11/4/1971, 11/15/1977,
12/23/1979, 7/12/1989,
9/1/1992 (Emer.), 10/2/1992