

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 4112-3-03

**Rule Type:** Amendment

**Rule Title/Tagline:** Preliminary investigation, probable cause, conciliation, no probable cause.

**Agency Name:** Ohio Civil Rights Commission

**Division:**

**Address:** 30 East Broad Street Fifth floor Columbus OH 43215

**Contact:** Stephanie Demers

**Email:** stephanie.demers@civ.ohio.gov **Phone:** 614-466-6255

#### **I. Rule Summary**

1. **Is this a five year rule review?** Yes
  - A. **What is the rule's five year review date?** 10/18/2018
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 4112.04
5. **What statute(s) does the rule implement or amplify?** 4112.05, 4112.04
6. **What are the reasons for proposing the rule?**

Five-year review cycle. The rule is not the result of recent legislation, but some suggested amendments are the result . (Ref. HB 463, 131st GA, Rep. Dever sponsor).

7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

The rule supplements R.C. 4112.05 and outlines the process of a charge from the preliminary investigation to a finding of probable or no probable cause to

conciliation. The rule further clarifies that the conciliation and mediation processes are confidential.

The agency seeks to make the following amendments:

Strike the word "such" in paragraphs (A) and (G) for grammatical purposes.

Change the tagline in paragraph (C) from "Conciliation" to "Elimination of unlawful discriminatory practices," to make the rule consistent with the statute. See. R.C. 4112.05(B)(4), which was changed to include alternative dispute resolution (ADR).

Clarify that while any party may request ADR, the commission retains the discretion to determine the method of eliminating an unlawful discriminatory practice. Though rare, the Commission sometimes will not send a case through the ADR route or will reject a withdrawal of charge with a private settlement when the state has a high interest in the outcome, such as in a systemic/pattern/practice case or if the discrimination is egregious.

(HB 463 added language to the statute codifying the Commission's successful mediation program. The agency seeks to clarify this process remains optional and must be agreed upon by all parties, including the Commission.)

Add the words "consent order" after conciliation agreement to clarify the fact that the Commission uses a tool called a conciliation agreement and consent order to resolve cases and that a CACO is a final order.

Change the tagline in paragraph (E) from "Failure of conciliation," to "Informal attempts to eliminate" to make the rule's language consistent with the statute.

Mirror the statute's words by adding the words "conference" and "persuasion" to conciliation and adding "alternative dispute resolution" in paragraph (J) - the non-disclosure paragraph. Finally, by adding "an executed" and "agreement and consent order," after conciliation, the agency is clarifying the final CACO document is not confidential.

8. **Does the rule incorporate material by reference?** No
9. **If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.**

*Not Applicable*

10. **If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

*Not Applicable*

## **II. Fiscal Analysis**

11. As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.

This will have no impact on revenues or expenditures.

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Not applicable.

12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?

Not applicable.

13. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No

14. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No

## **III. Common Sense Initiative (CSI) Questions**

15. Was this rule filed with the Common Sense Initiative Office? No

16. Does this rule have an adverse impact on business? No

A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? No

B. Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? No

C. Does this rule require specific expenditures or the report of information as a condition of compliance? No

**Rule Summary and Fiscal Analysis**

**(Part A – General Questions)**

**4112-3-03**

Rule Number

**Existing – Five-year review (Amended)**

TYPE of rule filing

Rule Title/Tag Line

**Preliminary investigation, probable cause, conciliation  
alternative dispute resolution, no probable cause.**

**Ohio Civil Rights Commission**

Agency Name

**Stephanie Bostos Demers**

Contact

**30 East Broad St., 5<sup>th</sup> Floor**

**Columbus, Ohio 43215**

Agency Mailing Address

**614-466-6255**

Phone

**stephanie.demers@civ.ohio.gov**

Email

**RULE SUMMARY**

1. Is this a five-year rule review?

**Yes.**

a. If so, what is the rule's five-year review date?

**10/21/2018**

2. Is this rule the result of recent legislation?

**The rule is not the result of recent legislation. However, some of the proposed amendments are the result.**

a. If so, what is the bill number, General Assembly and Sponsor?

Bill Number: **HB 463**

General Assembly:

**131<sup>st</sup>**

Sponsor: **Representative Dever**

3. What statute is this rule being promulgated under?

**R.C. 4112.04.**

4. What statute (s) grant the rule writing authority?

**R.C. 119.03.**

5. What statute(s) does the rule implement or amplify?

**Sections 4112.04 and 4112.05 of the Revised Code.**

6. What are the reasons for proposing (i.e., why are you filing,) the rule?

**Five-year review.**

7. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.

**The rule supplements R.C. 4112.05 and outlines the process of a charge from the preliminary investigation to a finding of probable or no probable cause to conciliation. The rule further clarifies that the conciliation and now mediation processes are confidential.**

**The agency seeks to make the following amendments:**

- **Strike the word “such” in paragraphs (A) and (G) for grammatical purposes.**
- **Change the tagline in paragraph (C) from “Conciliation” to “Elimination of unlawful discriminatory practices,” to make the rule consistent with the statute. See. R.C. 4112.05(B)(4): “If the commission determines after a preliminary investigation other than the one described in division (B)(3) of this section that it is probable that an unlawful discriminatory practice has been or is being engaged in, it shall endeavor to eliminate the practice by informal methods of conference, conciliation, and persuasion, or by alternative dispute resolution.”**
- **Clarify that while any party may request ADR, the Commission retains the discretion to determine the method of eliminating an unlawful discriminatory practice. Though rare, the Commission sometimes will not send a case through the ADR route or will reject a withdrawal of charge with a private settlement when the state has a high interest in the outcome, such as in a systemic/pattern/practice case or if the discrimination is egregious.**
  - **HB 463 added language to the statute codifying the Commission’s successful mediation program. The agency seeks to clarify this process remains optional and must be agreed upon by all parties, including the Commission.**
  - **See R.C. 4112.05(B)(2), (3), (4) and (5)**
- **Add the words “consent order” after conciliation agreement to clarify the fact that the Commission uses a tool called a conciliation agreement and consent order to resolve cases and that a CACO is a final order.**
- **Change the tagline in paragraph (E) from “Failure of conciliation,” to “Informal attempts to eliminate...” to make the rule’s language consistent with the statute.**

- **Mirror the statute's words by adding the words "conference" and "persuasion" to conciliation and adding "alternative dispute resolution" in paragraph (J) - the non-disclosure paragraph. Finally, by adding "an executed" and "agreement/consent order," after conciliation, the agency is clarifying the final CACO document is not confidential.**

8. Does the rule incorporate material by reference?

**Yes. R.C. 4112.01-4112.08, 4112.05; 4112.06; and 4112-3-10 of the Administrative Code**

9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.

**Not applicable.**

10. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed rule.

**Not applicable.**

### **Fiscal Analysis**

11. Estimate the total amount by which *this proposed rule* would **increase/decrease** either **revenues/expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

**Not applicable.**

12. What are the estimated costs of compliance of all persons and/or organizations directly affected by the rule?

**None.**

13. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B).

**No.**

14. Does the rule regulate environmental protection? (If yes, you must complete an RSFA, Part C).

**No.**

**Common Sense Initiative (CSI) Questions**

15. Was this rule filed with the Common-Sense Initiative Office?

**Not applicable.**

16. Does this rule have an adverse impact on business?

**No.**

- a. Does this rule require a license, permit or any other prior authorization to engage in or operate a line of business?
- b. Does this rule impose a criminal penalty, a civil penalty or another sanction, or create a cause of action for failure to comply with its terms?
- c. Does this rule require specific expenditures or the report of information as a condition of compliance?

**No to all.**