

161—3.13 (216) Investigation. The executive director or designee shall make a prompt investigation of the complaint. The administrative law judge may participate in the investigation and may direct the investigation. The investigator shall make a recommendation to the administrative law judge. The administrative law judge shall review the recommendation and issue a determination of probable cause or no probable cause for the commission.

3.13(1) Cause determinations. After a complaint has been filed, the executive director or a designated staff member shall assign a member of the investigatory staff to make a prompt investigation of the complaint. The investigator may confer with, be assisted by, or be directed by the administrative law judge during the investigation. The administrative law judge may participate in the investigation and engage in ex parte communications with the parties or their counsel. The investigator shall review all of the evidence and make a recommendation of probable cause or no probable cause or other appropriate action to the administrative law judge designated to issue findings. The administrative law judge shall review the case file and issue a determination of probable cause or no probable cause or other appropriate action on behalf of the commission.

3.13(2) Rejection of investigator's recommendation. Where the administrative law judge rejects the recommendation of the staff, the reasons shall be stated in writing and placed in the case file.

3.13(3) Notice of decision. Both the complainant and respondent may be notified of the decision in writing by regular or certified mail within 15 days of the administrative law judge's decision.

3.13(4) Conflicts prohibited. The administrative law judge designated to issue a finding shall not be permitted to serve as administrative law judge in a contested case where that administrative law judge has issued a finding in the same case.

3.13(5) Administrative closure and satisfactory adjustments. Designated staff of the commission may rule that a case be "administratively closed" as defined in 161—paragraph 2.1(10) "a," where no useful purpose would be served by further action by the commission, such as where the complainant has not been located after diligent efforts, issuance of a right-to-sue letter, or where, after a probable cause decision has been made, it is determined that the record does not justify proceeding to public hearing. Designated staff of the commission may close a case as "satisfactorily adjusted" as defined in 161—paragraph 2.1(10) "d." This provision does not contemplate administrative closure where an alternative resolution, such as full investigation, is warranted.

3.13(6) Conciliation. All cases that result in findings of probable cause shall be assigned to a staff conciliator for the purpose of initiating attempts to eliminate the discriminatory or unfair practice by conference, conciliation, or persuasion. When a conference is held, a synopsis of the facts which led to the finding of probable cause along with written recommendations for resolution will be presented to the respondent.

3.13(7) Participants. Both the complainant and respondent shall be notified in writing of the time, date, and location of any conciliation meeting. The complainant may be present during attempts at conciliation.

3.13(8) Minimum period for conciliation attempts. Upon the commencement of conciliation efforts, the commission must allow at least 30 days for the parties to reach an agreement. Conciliation efforts may be conducted by mail, teleconferencing, or face-to-face meetings with the parties at the discretion of the commission. The mandatory 30-day period for conciliation begins when the complainant and the commission's offer of settlement is communicated to respondent or respondent's attorney. After the passage of 30 days the executive director may order further conciliation attempts bypassed if it is determined that the procedure is unworkable. The director must have the approval of a commissioner before bypassing conciliation.

3.13(9) Conciliation agreements. A conciliation agreement shall become effective after it has been signed by the respondent or authorized representative, by the complainant or authorized representative, and by either a commissioner, the executive director or designee on behalf of the commission. Copies of the agreement shall be mailed to all parties.

3.13(10) *Breach of conciliation agreement.*

a. At any time in its discretion the commission may investigate whether the terms of a conciliation agreement are being complied with by the respondent. Upon a finding that the terms of the conciliation agreement are not being complied with by the respondent, the commission shall take appropriate action to ensure compliance.

b. Enforcement in court. Appropriate action to ensure compliance as used in the preceding paragraph includes the filing of an action in district court seeking specific performance of the terms of the conciliation agreement or other remedies which may be available.

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