

the decision affirms the preliminary determination, it is the final decision of the department and shall be subject to review in court.

History: Cr. Register, November, 1983, No. 335, eff. 12-1-83.

Ind 88.04 Withdrawal and amendment of complaints. (1) WITHDRAWAL. A complaint may be withdrawn at any time. A request for withdrawal shall be written and shall be signed by the complainant, or by the complainant's duly authorized representative or attorney of record. Upon the filing of a request for withdrawal, the department shall dismiss the complaint by written order, and such dismissal shall be with prejudice unless otherwise expressly stated.

(2) **AMENDMENT.** A complaint may be amended subject to the approval of the department, but not later than 10 days before hearing, unless good cause is shown for failure to amend the complaint prior to that time.

History: Cr. Register, November, 1983, No. 335, eff. 12-1-83.

Ind 88.05 Notice to respondents. Except where prevented by the anonymity requirement of s. 111.375 (1), Stats., the department shall serve a copy of the complaint upon each respondent prior to the commencement of any investigation. The department shall simultaneously serve a notice requesting a response to the complaint within 10 days after the date of the notice.

History: Cr. Register, November, 1983, No. 335, eff. 12-1-83.

Ind 88.06 Investigations. The department shall investigate all complaints which satisfy the review under s. Ind 88.03 and may subpoena persons or documents when related to an investigation. Subpoenas may be enforced pursuant to s. 885.12, Stats.

History: Cr. Register, November, 1983, No. 335, eff. 12-1-83.

Ind 88.07 Initial determinations of cause. (1) PROBABLE CAUSE. At the conclusion of the investigation, the department shall issue a written initial determination which shall state whether or not there is probable cause to believe that discrimination or unfair honesty testing occurred. The initial determination shall state the facts upon which it is based and shall be served upon the parties. If the department initially determines that there is probable cause, it shall simultaneously notify the parties that conciliation services are available, but that if conciliation fails or is waived, the matter shall be set for hearing.

(2) **NO PROBABLE CAUSE.** If the department initially determines that there is not probable cause, it shall simultaneously serve upon the parties an order dismissing the complaint and a notice of the complainant's right to hearing as provided in s. Ind 88.08.

History: Cr. Register, November, 1983, No. 335, eff. 12-1-83.

Ind 88.08 Hearing after initial determination of no probable cause. (1) RIGHT TO HEARING. Within 30 days after the date of an initial determination that there is not probable cause, a complainant may file with the division a written request for hearing. If no timely written request is filed, the complainant shall have waived the right to hearing, and the initial determination and order dismissing the complaint shall be final.

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(2) **HEARING.** If a timely request is filed, the hearing shall be conducted pursuant to s. Ind 88.16. The examiner shall upon the evidence make a finding either of probable cause or of no probable cause unless the parties stipulate prior to the hearing to allow the examiner to decide whether the respondent has engaged in discrimination or unfair honesty testing. If no probable cause is found, the complainant may petition for review of the examiner's findings pursuant to s. Ind 88.19. If probable cause is found, the department shall notify the parties that conciliation services are available, but that if conciliation fails or is waived, the matter shall be set for hearing.

History: Cr. Register, November, 1983, No. 335, eff. 12-1-83; emerg. r. and recr. (2), eff. 1-21-85; r. and recr. (2), Register, July, 1985, No. 355, eff. 8-1-85.

Ind 88.09 Conciliation. (1) **RESOLUTION OF DISPUTES.** The department shall attempt to resolve the dispute between the parties by conciliation unless either party waives conciliation in writing.

(2) **CONCILIATION AGREEMENT.** If conciliation resolves the dispute, a written conciliation agreement shall be prepared and shall state all measures to be taken by any party. The agreement may provide for dismissal of the complaint, provided that such dismissal is without prejudice to the complainant's right to pursue the complaint against any respondent who fails to comply with the terms of the agreement.

History: Cr. Register, November, 1983, No. 335, eff. 12-1-83.

Ind 88.10 Notice of hearing. If conciliation fails to resolve the dispute or is waived, the department shall serve a notice of hearing and a copy of the complaint on each party. The notice shall fully identify the parties and the case number. It shall specify a time and date of hearing not less than 30 days after service of the notice of hearing, and a place of hearing either in the county of the respondent's residence or in the county in which the discrimination or unfair honesty testing appears to have occurred. It shall specify the nature of the discrimination or unfair honesty testing which appears to have occurred, and shall state the legal authority on which the hearing is based.

History: Cr. Register, November, 1983, No. 335, eff. 12-1-83; am. Register, May, 1985, No. 353, eff. 6-1-85.

Ind 88.11 Answer. (1) **CONTENT.** An answer is a written statement which admits those allegations in the complaint which the respondent believes are true, denies those allegations which the respondent believes are false or which the respondent has insufficient knowledge to answer, and asserts any matters constituting a defense.

(2) **FILING AND SERVICE.** Each respondent shall file an answer within 10 days after the date of the notice of hearing. The department shall serve a copy of the answer upon all other parties.

History: Cr. Register, November, 1983, No. 335, eff. 12-1-83.

Ind 88.12 Prehearing conference. In any case set for hearing, prehearings may be held in accordance with the provisions of s. 227.07 (4), Stats.

History: Cr. Register, November, 1983, No. 335, eff. 12-1-83.

Ind 88.13 Subpoenas and motions. (1) **SUBPOENAS.** The examiner may issue subpoenas and subpoenas duces tecum, on the examiner's own motion or upon proper application of any party, whenever necessary to

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