

161—3.16 (216) Procedure to reopen.

3.16(1) *Application of rule.* The provisions of this rule apply only to commission decisions and actions taken prior to the issuance of the notice of hearing described in rule 161—4.1(216).

3.16(2) *Reopening by commission—general rule.*

a. At any time during which the commission would be required to issue a right-to-sue letter if the complainant were to request one, the commission may, in its discretion, reopen and reconsider any administrative closure of the commission.

b. The parties shall be notified whenever the commission is considering the reopening of a matter closed by an “administrative closure,” which notification shall include the reasons therefor. The parties shall be afforded no less than 14 and no more than 30 days to submit their positions, in writing, on the reopening.

c. The commission may reopen and reconsider an administrative closure where the commission finds that the administrative closure was substantially influenced by any of the following grounds:

(1) Willfully false information provided to the commission concerning a material issue in the case;
(2) Fraud perpetrated upon the commission by a witness, the respondent, or some person not the complainant;

(3) Material misrepresentations made by the respondent to the commission or complainant; or

(4) Gross and material error by the commission staff.

3.16(3) *Applications for reopening.*

a. Except where specifically otherwise provided, a complainant or respondent may apply for reopening of a previously closed proceeding.

b. The commission shall grant reopening upon good cause shown by the applicant.

c. An application for reopening under this subrule must be in writing alleging the grounds and must be filed within 30 days after the issuance of the decision or action to be reconsidered.

d. Written objections to a commission closure shall be liberally construed, where appropriate, as an application for reopening.

e. Unless the application for reopening is disposed of by summary denial, all parties shall be notified whenever an application for reopening is made. A copy of the request for reopening along with the grounds asserted in the request shall be provided to all respondents. The parties shall be afforded no less than 14 and no more than 30 days to submit their positions, in writing, on the motion for reopening.

The commission may summarily deny an application for reopening without seeking additional information and without following any of the procedures set forth in paragraph 3.16(3)“*e.*” Summary denial is appropriate when the application for reopening either fails to assert any grounds for reopening or asserts grounds which are inadequate to justify reopening.

f. The commission, a commissioner, the executive director or designee may grant or deny the application for reopening. If the application for reopening is granted, the matter shall be referred back to the investigating staff. If no further investigation is required, the commission shall decide the matter on the accumulated record of the case. Each of the parties shall be informed of the action taken on the application to reopen, in writing, either by regular or certified mail.

g. When the commission denies an application for reopening of an administrative closure, the notice of the denial may be made by regular mail. The date of the denial is the date the denial decision is mailed. The date of mailing is presumed to be the date on the cover letter accompanying the denial unless this date is shown to be in error.

3.16(4) *No probable cause determination reopening.* In addition to the reopening provisions of subrule 3.16(3), within one year after issuance of a no probable cause, the commission may, in its discretion, reopen and reconsider that no probable cause order where either:

a. The commission finds that the no probable cause order was influenced in substantial part by any of the following:

(1) Fraud perpetrated upon the commission by some person who is not the complainant; or

(2) Material misrepresentations made by the respondent to the commission or complainant.

b. Less than 30 days have elapsed since the issuance of the no probable cause order and the commission determines, in its discretion, that the interests of justice require the matter to be reopened and reconsidered.

3.16(5) *Successful conciliation, mediation, satisfactorily adjusted and withdrawal reopening.*

a. Breach.

(1) Application. A party to a settlement agreement may, within 90 days of the date respondent's performance under the agreement was to be completed, apply for reopening of a case which has been closed as satisfactorily adjusted on the grounds that the other party has materially breached the agreement. The commission shall not consider such an application for reopening if the commission is a party to the agreement alleged to have been breached. Also, the commission shall not consider such an application for reopening unless, as a part thereof, the party seeking the reopening agrees in writing that if the reopening is granted the agreements allegedly breached shall be null and void, and that such party waives and releases any rights to seek specific performance or damages for the alleged breach in court. If the commission finds that the agreement has been materially breached and that the respondent did not negotiate the agreement in good faith, the case shall be reopened.

(2) Notification of parties. All parties shall be notified that an application for reopening has been made. A copy of the request for reopening along with the grounds asserted in the request for reopening shall be provided to all respondents. The parties shall be afforded no less than 14 and no more than 30 days to submit their position on the motion for reopening in writing.

(3) Court action upon breach. The right to seek reopening under the provisions of paragraph "a" shall not affect a party's right to proceed in district court on an action for breach of contract based on the settlement agreement. Upon confirmation that a party has filed such an action for breach of contract, however, the commission shall close the case as that party's remedy shall lie in the district court. If so ordered by the court in such an action, the commission shall reopen a matter that had been closed as a result of the satisfactory adjustment.

b. Coercion or duress.

(1) Application. A party to an agreement may within 90 days after the closure apply for reopening of a case which has been closed as conciliated, mediated or satisfactorily adjusted on the grounds that the agreement was not entered into voluntarily.

(2) Notice to parties. All parties shall be notified that an application for reopening has been made. A copy of the request for reopening along with the grounds asserted in the request for reopening shall be provided to all respondents. The parties shall be afforded no less than 14 and no more than 30 days to submit their position on the motion for reopening in writing.

(3) Standard. An application for reopening under this paragraph must be supported by affidavit. There is a presumption that a person signing a settlement agreement has done so voluntarily. If the commission finds that the agreement was not entered into voluntarily, then the case shall be reopened.

(4) Ratification. A party is barred from applying for reopening of a case on the ground that the agreement was involuntary, if the party has voluntarily accepted all benefits of an agreement.

c. Withdrawal.

(1) In general. A person whose case has been closed as "withdrawn" may within 90 days after the closure apply for reopening of that case.

(2) Standard. An application for reopening under this paragraph must be supported by affidavit. There is a presumption that a person filing a withdrawal has done so voluntarily and with the intent that the charge be withdrawn. If the commission finds that the request for withdrawal either was not filed voluntarily or was filed as a result of a mistake concerning the effect of the request for withdrawal, the case shall be reopened.

(3) Ratification. If the withdrawal is filed pursuant to a conciliation, mediation or other settlement agreement and the complainant has ratified that agreement, the complainant is barred from applying for reopening of the case on the ground that the agreement was not voluntary.

3.16(6) *Probable cause determination.* The provisions of subrule 3.16(3) notwithstanding, a respondent may not apply for reconsideration of a finding of probable cause.

3.16(7) *Decision to proceed to hearing.* The provisions of subrule 3.16(3) notwithstanding, a complainant may not apply for reopening of a case which has had a finding of probable cause but which is administratively closed because it is determined that the record does not justify proceeding to hearing.

3.16(8) *Request for right-to-sue reopening.* The commission may reopen any case which has been administratively closed whenever: a request for an administrative release is received, all the conditions for issuance of the administrative release are satisfied, and none of the exceptions set forth in subrule 3.10(4) apply. This type of reopening is made in order to effect the complainant's statutory right to receive an administrative release. A reopening under this subrule need not be separately made and issued, but instead is inherent in the issuance of the right to sue.

3.16(9) *Issuance of right to sue.*

a. The issuance of a right-to-sue letter may not be reconsidered and a case closed after such an issuance may not be reopened.

b. If the right-to-sue letter was issued to a complainant who had not requested it and the commission notifies the parties of this error within 90 days of the erroneous issuance, then the closure after the erroneous issuance of the right-to-sue letter will be deemed void and the case reopened.

3.16(10) *Notice of reopening.* Whenever the commission reopens or reconsiders a decision, case closure, or other action of the commission, the commission shall mail each of the parties notice of the reopening in writing sent by regular or certified mail to the last-known mailing address.

3.16(11) *Effect of reopening.* Whenever a case is reopened by the commission, whether upon application or otherwise, the previous closure of the case is made void. The previous closure of a reopened case has no effect whatsoever on the case after the reopening. A reopening constitutes a reversal of the prior determination to close the case.