

**161—3.12 (216) Administrative review and closure.****3.12(1) Preliminary screening.**

*a. Questionnaire.* As soon as practicable after receipt of a complaint, the commission may draft and mail to the parties written questionnaires. Respondent and complainant may respond via regular, certified or local mail, electronic mail, or online via the commission's case management system. Complainant and respondent will receive different sets of questions as the complainant and respondent typically have different items of information and different interpretations of the facts. The questionnaire will be as specific as practicable to the particular complaint.

*b. Responses to the questionnaire.*

(1) Respondent and complainant are required to respond in writing to their respective questionnaires. The answers ordinarily should be responsive to the questions asked, though elaboration is encouraged. If a question does not apply, the responder can so indicate. In lieu of answers responsive to the particular questions, the commission will accept written position statements, provided the statements respond to the allegations. The position statements should cover the same general subject areas covered by the questionnaire. Accompanying supportive evidence is required, including application materials, job descriptions, organizational charts, selection procedures, policies, procedures, employee handbooks, job descriptions, signed statements from witnesses, performance evaluations, discipline records, E-mails, photographs, internal investigation records, and other documents that are relevant. The documents should encompass how the complainant was treated and how persons similarly situated to the complainant were treated.

(2) Responses are due 30 days from the mailing of the questionnaire. Extensions will be granted on an informal basis. Requests for extensions may be oral and may be granted or denied orally. No notice of the request for an extension or of the disposition of that request need be given to the nonrequesting party. A requesting party may assume the extension is approved unless otherwise notified. Requests for extensions may be granted for 30 days or less. Extensions greater than 30 days may be subject to review by the executive director or designee. The legislature encourages preliminary screening to be completed within 120 days of the filing of the complaint; therefore, requests for extensions are strongly discouraged. A request for an extension by a party shall constitute a waiver by that party of any objection to the commission taking longer than the 120-day period to screen the complaint.

*c. Failure to respond.*

(1) Complainant. A complaint may be administratively closed when a complainant fails to respond to the questionnaire.

(2) Respondent. A complaint may be screened in and assigned to investigation when a respondent fails to respond to the questionnaire. Also, information may be sought pursuant to the commission's subpoena procedures.

*d. Suggested procedure in answering questionnaire.* Answers should be as clear and as precise as possible. Answers too long to be placed on the questionnaire itself should be numbered by part and question number and placed on a separate sheet. The parties are encouraged to submit as much supporting documentation as possible including affidavits of witnesses and documentation of treatment of individuals comparable to the complainant. Where not readily apparent, the significance of the submitted supporting documentation should be explained. This may be done through an answer that refers the commission to a particular item of the submitted supporting documentation.

*e. Preliminary screening process.* As soon as practicable after the receipt of all materials responsive to the questionnaires, the executive director or designee shall review the submitted answers and materials. The executive director or designee shall then determine whether the case will be "screened in" as warranting further processing or "screened out" as not warranting further investigation.

*f. Standard for screening.* A case will be screened in when further processing is warranted. Further processing is warranted when the collected information indicates a reasonable possibility of a probable cause determination or the legal issues in the complaint need development.

*g. Effect of screen out.* A complaint determined not to warrant further processing shall be administratively closed.

*h. Effect of failure to follow screening procedure.* Preliminary screening is a tool to remove from the commission's active complaints those cases which the collected preliminary information indicates do not warrant further processing. Irregularities in the preliminary screening of a complaint, failure to complete preliminary screening within 120 days of the filing of the complaint, or failure to follow the preliminary screening procedure altogether shall not, by itself, in any way prejudice the rights of either party.

**3.12(2) Periodic review and administrative closure.**

*a. Periodic evaluation of evidence.* The executive director or designee may periodically review the complaint to determine whether further processing is warranted. Where the periodic review occurs prior to the determination of whether there is probable cause, then processing is warranted when the collected information indicates a reasonable possibility of a probable cause determination or the legal issues in the complaint need development. A complaint determined not to warrant further processing shall be administratively closed.

*b. Uncooperative complainant.* A complaint may be administratively closed at any time if the complainant cannot be contacted after diligent efforts or is uncooperative, causing unreasonable delay in the processing of the complaint.

*c. Involuntary satisfactory adjustment.* A complaint may be closed as satisfactorily adjusted when the respondent has made an offer of adjustment acceptable to the executive director or designee but not to the complainant. Notice of intended closure shall state reasons for closure and shall be mailed to the complainant. The complainant shall be allowed 30 days to respond. The response shall be in writing and state the reasons why the complaint should remain open. The executive director or designee shall review and consider the response before making a closure decision.

*d. Litigation review.* The complaint may be administratively closed after a probable cause determination has been made where it is determined that the record does not justify proceeding to public hearing.

**3.12(3) Purpose and effect of administrative closures.** An administrative closure need not be made as a result of the procedures governing a determination of whether there is probable cause. Unlike a "no probable cause determination" an administrative closure is not a final determination of the merits of the case. An administrative closure resulting from preliminary screening is merely an estimation of the probable merits of the case based on the experience and expertise of the commission. An administrative closure does not have the same effect as a determination of "no probable cause."