

State of Washington  
PUBLIC DISCLOSURE COMMISSION

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**MINUTES – Regular Meeting**

9:30 a.m. | January 25, 2018

Evergreen Plaza Building, Room 206

711 Capitol Way

Olympia, Washington

**Commission Members Present**

Anne Levinson, Chair; Jack Johnson, Vice-Chair; David Ammons, Member; Bill Downing, Member.

**Staff Present**

Peter Lavalley, Executive Director; BG Sandahl, Deputy Director; Kim Bradford, Communications and Outreach Director; Kurt Young, Compliance Officer; Phil Stutzman, Sr. Compliance Officer; Jim Coleman, IT Specialist; Jana Greer, Administrative Officer; Toni Lince, Customer Service Representative; Scott Douglas, Assistant Attorney General; and Chad Standifer, Assistant Attorney General.

The regular meeting of the Public Disclosure Commission was called to order by Commission Chair Anne Levinson at 9:30 a.m.

Chair Levinson introduced and welcomed new Commission member Bill Downing, a retired King County Superior Court judge. | [PDC Meeting Video](#)

Commissioner Downing's PDC Commission term is for four years, 2018-2022.

**Public Comments | [PDC Meeting Video](#)**

**Glen Morgan**

Glen Morgan, resident of Thurston County, provided a handout regarding campaign finance law reform to the Commission.

Mr. Morgan noted that the 13 items in the handout are based on the variety of complaints he has filed with the PDC. He felt that reforms, if they were implemented, would both eliminate the ability of some of the complaints/allegations, but also make participation in the political process easier.

Mr. Morgan thanked Executive Director Lavalley for his September letter regarding the Citizens for Honest Government PAC case. The letter very much addressed a concern he had brought before the Commission at a prior meeting.

**Meeting Minutes | [PDC Meeting Video](#)**

The Commission considered approval of the December 12, 2017, regular meeting minutes.

In addition to minor clerical edits on page eight, Commissioner Ammons asked for additional information to be added to the section referencing Kimberly Allen, [PDC case 22200](#), clarifying Ms. Allen's request. Ms. Allen requested that the Commission remove the history of the allegations from the PDC records. The Commission informed her that it was not possible to do this. However, if she runs for an office in the future she could point to the fact that the Commission had vacated the penalty and dismissed the order.

**Motion 18-01** Moved by Commissioner Ammons, seconded by Commissioner Johnson that:

**The Commission approve the meeting minutes as amended.**

The motion passed.

**Follow up/Next Steps:** Jana Greer will make corrections and edits to the December 12, 2017, meeting minutes as discussed.

**Rules | [PDC Meeting Video](#)**

Deputy Director Sandahl presented for consideration and final adoption amendments to WAC 390-14-025, WAC 390-14-028, and WAC 390-14-030. The Commission has twice approved emergency rules as the PDC staff worked through the rules process. The proposed changes amend the rules to comply with the new public records act requirements the Legislature passed in 2017.

A public hearing on the rule changes was held on December 27, 2017, at the PDC offices. There were no public comments made or written comments received.

Staff recommended that the Commission approve the final adoption of the new rule as presented.

**Motion 18-02** Moved by Commissioner Johnson, seconded by Commissioner Ammons that:

**The Commission adopt the rule as presented.**

The motion passed.

Deputy Director Sandahl discussed the staff request for amendments to WAC 390-05-400, regarding periodic changes in dollar amounts.

The provisions in RCW 42.17A.125 require the Commission in even-numbered years to consider making inflationary adjustments to limits and other dollar amounts enacted by Initiative 134 and found in WAC 390-05-400.

Staff contacted the Office of Financial Management's (OFM) forecasting division regarding calculations for the inflationary adjustments. Based on those calculations, the dollar amounts set by the Commission in 2016 in each category remain appropriate for the current level of inflation.

Staff recommended that the Commission take no action, and revisit this requirement in the year 2020 as statutorily mandated.

**Motion 18-03** Moved by Commissioner Johnson, seconded by Commissioner Ammons that:

**The Commission has reviewed the threshold amounts and will affirmatively keep the current penalty levels as established in 2016.**

The motion passed.

Deputy Director Sandahl will present any new proposed rules that arise from the current legislative session at the March Commission meeting.

**Follow up/Next Steps:** Director Sandahl will file the final adopted rule with the Code Reviser.

**Enforcement Hearing | [PDC Meeting Video](#)**

**John and Laurie Knutsen: PDC Case 24298**

John and Laurie Knutsen were present and represented by attorney Patricia Bosmans, also present.

Chad Standifer, Assistant Attorney General, represented PDC staff in this matter, a case involving alleged campaign finance violations during the 2017 Puyallup City Council elections. and RCW 42.17A.320.

Chair Levinson presided over the hearing.

Phil Stutzman, Sr. Compliance Officer, testified on behalf of staff about the facts alleged in the Notice of Administrative Charges, as well as the Report of Investigation. Mr. Stutzman also testified about penalties assessed in comparable cases. Peter Lavallee, Executive Director, was present under subpoena from Respondents' counsel, but was not called to testify.

PDC staff alleged that John and Laurie Knutsen violated RCW 42.17A.305 by failing to timely file a C-6 special report disclosing an electioneering communication, and RCW 42.17A.320 by failing to include sponsor identification on an electioneering communication that was also political advertising. Staff alleged the Knutsens paid for and had distributed anonymously a flyer costing \$2,100.

Mr. Standifer asked the Commission to find violations of RCW 42.17A.305 and 42.17A.320 and assess a \$2,000 penalty with \$1,000 suspended for four years, based on future compliance.

John Knutsen testified on behalf of the Respondents. Ms. Bosmans acknowledged that the Respondents violated RCW 42.17A.305 and 42.17A.320, but argued that the violations were not intentional. She presented information concerning comparable cases and asked for a penalty lower than staff's recommendation.

The Commission went into deliberation at 11:27 a.m. and returned to the hearing at 11:45 a.m.

Commissioner Johnson stated that the Knutsens violated the law by failing to timely file a C-6 report within 24 hours of their July 6, 2017 mailing that opposed John Hopkins in his campaign for Puyallup City Council, and that they also violated RCW 42.17A.320 by failing to include their names and address as sponsors on the electioneering communication that also constituted political advertising.

Commissioner Johnson made the below Motion to reduce the penalty from staff's recommended amount, stating the Motion was based on his view that some of the aggravating factors cited by staff did not justify increasing the penalty. He said the fact that the flyer was anonymous was simply another way of saying that the sponsors failed to identify themselves, and was not an aggravating factor to be considered in assessing the penalty. He also said that failing to provide voters with significant information spoke to the essence of the violation, but should not be considered a separate aggravating factor.

**Motion 18-04** Moved by Commissioner Johnson, seconded by Commissioner Ammons that:

**The Commission adopt the Findings of Fact and Conclusion of Law that were set forth in the PDC staff Report of Investigation, and that the Commission Order a Civil penalty of \$1,500 with \$1,000 suspended, and require that all reporting requirements are completed; that the Respondents commit no further violations of RCW 42.17A for four years from the date of the Final Order; and that the non-suspended portion of the penalty be paid within 30 days from the date of the Final Order.**

The motion passed.

**Follow up/Next Steps:** The Commission will send a written Order within 15 days.

**Executive Session**

The Commission went in to Executive Session at 11:50 am to discuss matters allowed in Executive Session pursuant to [RCW 42.30.110](#), including but not limited to discussion of enforcement matters, pending and potential litigation with legal counsel. Any action regarding pending litigation, or other matters properly discussed during executive session, would be taken following the Executive Session.

The Commission returned to the open public meeting at 1:00 pm.

#### **Information Technology Report** | [PDC Meeting Video](#)

Jim Coleman, Information Technology Specialist 5 (IT5), updated the Commission on the status of IT-related projects.

In January, the IT team deployed a new wireless network managed by Washington State IT central services (WaTech). This service provides Internet access for agency guests, the commission and staff using their own personal devices. This work also lays the groundwork for completely replacing the agency wireless with a WaTech solution, if funding becomes available.

An upgrade for the F-1 application launched on time, right before the new year, but had to be rolled back when problems surfaced that needed correction. Those fixes took a couple of weeks, and the application was relaunched earlier this week. Staff will be doing some follow-up research to determine why these defects were not identified during our testing so we can improve our processes to avoid similar problems in the future.

Overall, the team has demonstrated success in delivering high-quality work on time and on budget, and this experience will be used to ensure that our processes work even for small maintenance projects like this one.

The L-5 project was scheduled to start right at the New Year but has been stalled while resources were diverted to the F-1 fixes. With the F-1 fix now having been successfully deployed, resources are being devoted to L-5 improvements.

Two L-5 meetings with internal stakeholders and subject matter experts have been held, as well as a planning meeting. Compliance and Customer Service staff members are putting together materials to identify what is critical or legally required so we can ensure that critical pieces are tackled first and in full. The first major task in this project is to implement full import and export functionality so that larger state agencies with extensive lobbying activity can better use the application.

Moving forward beyond this month and the L-5 maintenance application, the team will continue work on:

- Data Center elimination (currently on hold while waiting on WaTech to finish provisioning the system)
- The Annual Officials List and Declaration improvements
- Completing the build-out of the Agency wireless network
- Project scoping for ORCA campaign finance software upgrade/replacement.

#### **Compliance and Enforcement Updates** | [PDC Meeting Video](#)

Kurt Young, Compliance Officer, presented the compliance status update for November 30, 2017, through January 19, 2018.

#### Compliance Case Summary for 2017

Total number of opened cases = 525 (Note: does not include the 277 mandatory filer enforcement hearing respondents for 2017).

Total number of cases closed = 173.

Total number of open cases as of December 31, 2017 = 415.

As of January 19, 2018

Total number of open cases = 450.

Case Summary for November 30, 2017 through January 19, 2017

27 new complaints received and cases opened November 30 through December 31, 2017.

32 new complaints received and cases opened January 1 through January 19, 2017.

8 Cases closed—no technical violation, minor filing error may have occurred (WAC 390-37-060(1)(a)).

13 Cases closed—minor technical violation and/or minor filing error—reminder letter issues (WAC 390-37-060(1)(a)).

4 Cases closed—technical violations with mitigating circumstances—written warning letter issue (WAC 390-37-060(1)( b)).

1 Case schedule for brief adjudicative proceeding.

3 Cases scheduled for Candidate mandatory filing enforcement hearing.

Commissioner Ammons asked that Staff provide an update on past cases in which the commission made its decision contingent on the filer taking action, such as the recent order to waive a penalty levied against a school board candidate, provided the candidate in fact withdrew if elected, as indicated.

**Follow up/Next Steps:** Compliance staff will update/report follow-up on such cases monthly to the Commission.

**Communications and Outreach Report | [PDC Meeting Video](#)**

Kim Bradford, Communications and Outreach Director, updated the Commission on current customer service statistics.

Customer Service

Despite an increase in help tickets last month, Staff was able to hold steady on the resolution time. One main reason is the developmental assignments members of the customer service team are doing to learn filer assistance duties. Because of this cross-training, staff was able to answer all requests for filer assistance that were received on a very busy filing day on January 10. The team's performance demonstrates the great potential value in having a third Filer Assistance Specialist.

Public Records Requests

The agency experienced a 12 percent increase in the number of public records requests filed in 2017. Most of the increase was due to requests for F-1 reports. It seems that other, non-F-1 requests are growing in complexity, requiring multiple installments in response over time. Staff is starting a tracking system to capture the number of installments required to answer public records requests.

Annual Report

Director Bradford presented and discussed the draft 2017 Annual Report. Once approved that report will be submitted to OFM for approval.

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Commissioner Ammons stated that the vetting approval period is problematic in a short legislative session. This a tool to use to show those that are new to the Legislature an overview of the PDC while they are in session making decisions.

Commissioner Johnson suggested that a draft be linked to the PDC website until the final is approved.

Commissioner Ammons asked that future planning be made to allow for the Annual Report to be completed so that it can be used during legislative session.

**Follow up/Next Steps:** Director Bradford will send the final draft to the Commission members for their use in discussions with legislators and others, pending formal OFM approval.

**Motion 18-05** Moved by Commissioner Johnson, seconded by Commissioner Downing that:

**The Commission approve the 2017 Annual Report as discussed.**

The motion passed.

#### Process Improvement—Skype Training

Staff launched limited Skype training, using a session on L-5 public agency lobbying and Lobbyist/lobbyist-employer training as learning opportunities. A handful of people participated, enabling PDC staff to work on some technical issues with an initial, small-scale trial.

The response was favorable. There are some technical requirements on the users end that may not allow all users to participate. This platform does allow staff to record trainings that can be accessed later via the web. Staff will continue to add and improve Skype training, as well as pursue other platforms as the online training program progresses.

**Follow up/Next Steps:** Commissioner Levinson asked that staff add to the agency workplan to review whether additional public and regulated-community education is required, based on legislative action this session.

#### **Executive Director and Deputy Director Report | [PDC Meeting Video](#)**

##### Recurring Items—Commission Calendar

Executive Director Lavallee updated the Commission on completed items and additions to the agency administrative recurring calendar.

A review of the agency delegation of authority policy was completed in July 2017 and is current. This policy will be regularly reviewed and updated as needed.

Staff have submitted annual conflict of interest statements to the Executive Director.

Agency equipment inventory status was not available at the time of the meeting but will be completed.

##### Strategic Plan

Executive Director Lavallee provided a handout of strategic plan metrics, pulling information from the strategic plan the measures/metrics and placing them in one report. This report will be used to track as the plan progresses.

Monthly meetings have been instituted to discuss strategic plan items, and sub-committees may be formed as needed out of these discussions.

Staff will update/report to the Commission quarterly on the strategic plan.

**Follow up/Next Steps:** Commissioner Levinson asked that Staff prepare the agency's "aspirational metrics," i.e., what the PDC would like to be able to accomplish, were it at full capacity, as opposed to what

the current capacity allows staff to do. Executive Director Lavalley will bring this to the Commission in March.

#### Legislative Update

Deputy Director Sandahl provided an update on pending legislation. A weekly update will be sent to the Commissioners with links to current bill status and information.

#### Discussion regarding HB 2938 concerning campaign finance law enforcement and reporting

This bill relates to Citizen Action Complaints, how they are processed, and related matters.

The Commission has had past discussions on what the intent of the statute was and how it has evolved, along with what the impact has been on the regulated community, the public, and the agency. The Commission is interested in working with the Legislature on some reforms that do not in any way reduce public access to information, or reduce the disclosure obligations of filers.

The statute provides that if a person gives certain written notices to the Attorney General (ATG) and prosecuting attorney in the county in which a violation may have occurred, that person may bring a lawsuit on behalf of Washington State, if the ATG or prosecuting attorney has not taken action.

In 2015, the State Supreme Court in Utter v. BIAW, interpreted the language of the statute to mean that action by the PDC does not preclude such an individual from taking the matter to court.

Commissioner Levison reviewed the impacts that have occurred since this ruling.

- A dramatic increase in Citizen Action complaints, approximately 300 cases opened in 2017 alone.
- Complaints have become increasingly complex, with many containing numerous allegations.
- The complaints rise to the top of the incoming complaints queue due to the 45-day time frame, regardless of the substance.
- Because a complainant can go to court on behalf of Washington State, the alternative resolutions the Commission has created cannot be used in a given matter.
- This has led to an approach that is focused on litigation strategy. The only action that forestalls a person going to court is the ATG or the prosecuting attorney suing.
- Candidates and committees have expressed that they are fearful of identifying deficiencies they can correct, because if they do, it could be seen as an admission of a violation.

This has created a shortcut around the PDC and undercuts the authority the public intended the PDC to have.

The Commission recommended that there be legislative amendments to address several areas:

- To make it clear that if the PDC acts in a timely and appropriate manner, consistent with its rules and statute, that should constitute State action so that both parties and the public can rely on what the PDC does as having resolved the matter. Also, any statutory changes should encourage alternative resolution approaches and quick resolution of minor complaints, allowing the PDC to conduct full investigations when appropriate to ensure that those rules will be upheld.
- If the Citizen Action route is triggered because the PDC is not operating as it should, and the Attorney General becomes the fallback, the statute should allow the Attorney General the same alternatives as the PDC would have to resolve the complaint without litigation when that is the most appropriate course of action.
- The statute needs to emphasize—and the PDC's appropriated budget needs to reflect—the importance of the PDC being able to use tools to help ensure quick and full disclosure through assistance to those trying to comply with the law.

The statute should provide the PDC the authority to identify reporting errors and give filers a very brief window to correct them, before something becomes an official complaint and possible violation.

- Legislation should provide dedicated ongoing funding sources to enable the PDC to do its job effectively.

The PDC will partner with the Legislature to improve the language of the bill.

**Motion 18-06** Moved by Commissioner Johnson, seconded by Commissioner Ammons that:

**The Commission support and delegate authority to Chair Levinson to continue to work on this matter with those goals in mind.**

The motion passed.

The meeting adjourned at 2:38 pm.

Approved February 27, 2018