



PUBLIC DISCLOSURE COMMISSION

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To: Members, Washington State Public Disclosure Commission
From: Lori Anderson, Communications & Training Officer
Date: September 15, 2016
Re: Rule Making – Planning & Preparation | Enforcement Rules

In the last two months, the Commission identified updates it plans for enforcement rules, including:

- aligning hearing procedures with the model rules, WAC 10-08-080;
- modernizing time period calculations for requests for reconsideration of decisions,*
- facilitating respondents' waiver of APA requirements to allow notices of hearing to be served by email;
- updating penalty factors; and
- adopting additional penalty schedules for late reports and political advertising.

*The Commission has also directed a comprehensive update to clarify and make consistent the use of “business” and “calendar” days in Title 390 WAC. This will be a separate rules package that staff plans to include in the January – June 2017 development calendar.

Staff expects language for the enforcement updates will be drafted and offered for the Commission's consideration in October. First, though, a question about the possible new penalty schedules. The Commission currently has four penalty schedules that address violations related to electronic filing, personal financial affairs reporting, lobbyist monthly reporting, lobbyist employer reporting, and candidate registration & personal financial affairs reporting. Does the Commission wish to keep going in this vein and adopt separate penalty schedules for late reports and political advertising, or is it preferable to adopt a penalty schedule that uses a point system as shown in the attached example? If the point system is preferable, the Commission should decide:

- Whether to repeal the current penalty schedules, which are attached, and replace them with a point-based penalty schedule or leave them in force and adopt a point-based schedule for specific subjects; and
- Does the Commission want to assign a single point value or a point range to each factor?

Attachments

\$100 base penalty X sum of points = total penalty	
Point Value	Factor
1	Late report (1 point for each report)
2	Person charged has previous experience as a candidate or a campaign officer
2	Person charged found in violation of RCW 42.17A or Title 390 WAC in last five years, irrespective of the campaign
1	Other campaign officers found in violation of RCW 42.17A or Title 390 WAC in last five years
2	Corrections were not made within 1 week of PDC staff's notice of deficiencies
1	Public is deprived of campaign receipts or expenditure information $\leq 5\%$ of overall receipts or expenditures
2	Public is deprived of campaign receipts or expenditure information $> 5\%$ of overall receipts or expenditures
2	Exceeding contribution limits
2	Exceeding mini reporting thresholds
1	Political advertising lacks sponsor identification
1	Political advertising lacks party preference
5	Use of public facilities to assist a campaign for election or promote a ballot measure

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer.

(2) The presiding officer may direct a matter to the full commission if the officer believes one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(3) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to one thousand dollars.

EXAMPLE

WAC 390-37-155

Electronic filing brief enforcement hearing penalty schedule.

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to electronically file by date required.	\$350	\$650	\$1,000	Full commission consideration

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer including, but not limited to, payment of the nonsuspended portion of the penalty within five business days of the date of entry of the order in that case.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to one thousand dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

[Statutory Authority: RCW **42.17A.110**(1). WSR 16-01-015, § 390-37-155, filed 12/4/15, effective 1/4/16. Statutory Authority: RCW **42.17.370**. WSR 03-22-065, § 390-37-155, filed 11/4/03, effective 12/5/03.]

WAC 390-37-160**Statement of financial affairs (F-1) penalty schedule.**

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file report by date of enforcement hearing.	\$250	\$500	\$1,000	Full commission consideration
Filed report after hearing notice but before enforcement hearing.				Full commission consideration
Did not pay settlement amount.	\$150	\$300	\$600	Full commission consideration
Filed report after hearing notice but before enforcement hearing.				
Provided written explanation or appeared at the hearing to explain mitigating circumstances.				Full commission consideration
Did not pay settlement amount.	\$0 - \$150	\$150 - \$300	\$300 - \$600	Full commission consideration

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer including, but not limited to, payment of the nonsuspended portion of the penalty within five business days of the date of entry of the order in that case.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to one thousand dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commission for an enforcement action when the person:

(a) Was found in violation during a previous reporting period;

(b) The violation remains in effect following any appeals; and

(c) The person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

[Statutory Authority: RCW [42.17A.110](#)(1). WSR 16-01-015, § 390-37-160, filed 12/4/15, effective 1/4/16.
Statutory Authority: RCW [42.17.370](#). WSR 05-04-038, § 390-37-160, filed 1/27/05, effective 2/27/05;
WSR 03-22-065, § 390-37-160, filed 11/4/03, effective 12/5/03.]

WAC 390-37-165**Candidate registration statement (C-1)/candidate statement of financial affairs (F-1) penalty schedule.**

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file F-1 and/or C-1 by date of enforcement hearing.	\$250 per report	\$500 per report, up to \$1,000	Full commission consideration	Full commission consideration
Filed reports after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$150 per report	\$300 per report	\$600 per report, up to \$1,000	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$0 - \$150 per report	\$150 - \$300 per report	\$300 - \$600 per report, up to \$1,000	Full commission consideration

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration including, but not limited to, payment of the nonsuspended portion of the penalty within five business days of the date of entry of the order in that case.

(3) The presiding officer may direct a matter to the full commission if the officer believes one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to one thousand dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commission for an enforcement action when the person:

- (a) Was found in violation during a previous reporting period;
- (b) The violation remains in effect following any appeals; and
- (c) The person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

[Statutory Authority: RCW [42.17A.110](#)(1). WSR 16-01-015, § 390-37-165, filed 12/4/15, effective 1/4/16. Statutory Authority: RCW [42.17.370](#). WSR 05-04-038, § 390-37-165, filed 1/27/05, effective 2/27/05; WSR 03-22-065, § 390-37-165, filed 11/4/03, effective 12/5/03.]

WAC 390-37-170**Lobbyist monthly expense report (L-2) penalty schedule.**

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file report by date of enforcement hearing.	\$250	\$500	\$1,000	Full commission consideration
Filed report after hearing notice but before enforcement hearing.				Full commission consideration
Did not pay settlement amount.	\$150	\$300	\$600	Full commission consideration
Filed report after hearing notice but before enforcement hearing.				
Provided written explanation or appeared at the hearing to explain mitigating circumstances.				Full commission consideration
Did not pay settlement amount.	\$0 - \$150	\$0 - \$300	\$300 - \$600	Full commission consideration

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer including, but not limited to, payment of the nonsuspended portion of the penalty within five business days of the date of entry of the order in that case. Except in rare circumstances, the nonsuspended portion of the penalty will not be less than the original settlement offer.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to one thousand dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commission for an enforcement action when the person:

(a) Was found in violation during a previous reporting period;

(b) The violation remains in effect following any appeals; and

(c) The person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

[Statutory Authority: RCW **42.17A.110**(1). WSR 16-01-015, § 390-37-170, filed 12/4/15, effective 1/4/16.

Statutory Authority: RCW **42.17.370**. WSR 05-04-038, § 390-37-170, filed 1/27/05, effective 2/27/05;

WSR 03-22-065, § 390-37-170, filed 11/4/03, effective 12/5/03.]

WAC 390-37-175**Lobbyist employer report (L-3) penalty schedule.**

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file report by date of enforcement hearing.				Full commission consideration
	\$250	\$500	\$1,000	
Filed report after hearing notice but before enforcement hearing.				Full commission consideration
Did not pay settlement amount.	\$150	\$300	\$600	
Filed report after hearing notice but before enforcement hearing.				Full commission consideration
Provided written explanation or appeared at the hearing to explain mitigating circumstances.				Full commission consideration
Did not pay settlement amount.	\$0 - \$150	\$150 - \$300	\$300 - \$600	

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer including, but not limited to, payment of the nonsuspended portion of the penalty within five business days of the date of entry of the order in that case.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to one thousand dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commission for an enforcement action when the person:

(a) Was found in violation during a previous reporting period;

(b) The violation remains in effect following any appeals; and

(c) The person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

[Statutory Authority: RCW [42.17A.110](#)(1). WSR 16-01-015, § 390-37-175, filed 12/4/15, effective 1/4/16. Statutory Authority: RCW [42.17.370](#). WSR 05-04-038, § 390-37-175, filed 1/27/05, effective 2/27/05; WSR 03-22-065, § 390-37-175, filed 11/4/03, effective 12/5/03.]