

**State of Washington
PUBLIC DISCLOSURE COMMISSION**

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MINUTES – Regular Meeting

Evergreen Plaza Building, Room 206
711 Capitol Way South
Olympia, Washington

9:30 a.m.
April 28, 2016

COMMISSION MEMBERS PRESENT

Katrina Asay, Chair
Anne Levinson, Vice Chair
John Bridges, Member

STAFF PRESENT

Evelyn Fielding Lopez, Executive Director
Lori Anderson, Communication and Training Officer
James Gutholm, Chief Information Officer
Penny Allen, Assistant Attorney General
Chad Standifer, Assistant Attorney General
Chip Beatty, Filer Specialist
Jana Greer, Executive Assistant

The regular meeting of the Public Disclosure Commission was called to order by Commission Chair Katrina Asay at 9:30 a.m. in the Evergreen Plaza Building, Room 206 Olympia, Washington.

Opening Comments

Commissioner Asay called the meeting to order at 9:30 a.m.

Citizens Comments/Concerns

No comments or concerns were expressed.

Commissioner Comments/Concerns

No comments or concerns were expressed.

Meeting Minutes

March 24, 2016 Regular Meeting

Motion 16-19

Moved by Commissioner Bridges, seconded by Commissioner Levinson that:

The Commission approve the March 24, 2016 regular meeting minutes.

The motion passed.

Training

Independent Expenditures –
Presentation

Chip Beatty presented an overview of the process and requirements to report Independent expenditures (IE). Mr. Beatty discussed the difference between an IE and Electioneering Communications. He reviewed the sponsor identification requirements for advertising, and the levels of reporting on the C6 report.

Rulemaking

Public hearing and possible adoption of
new WAC 390-17-019 Contribution
Limits to Affiliated Committees

Commissioner Asay opened the public hearing at 10:06 a.m.
Lori Anderson presented new WAC 390-17-019
“Contribution Limits to Affiliated Committees to the
Commission” for consideration and possible adoption.

There was no public comment on the proposed rule.

The proposed new rule captures the Commission's long-standing approach for applying a limit to contributions given to multiple committees created or controlled by a recipient who is subject to contribution limits.

The proposed rule also explains which committees are affiliated for the purpose of receiving contributions.

Staff requested that the Commission adopt the proposed rule.

Motion 16-20

Moved by Commissioner Bridges, seconded by Commissioner Levinson that:

The Commission adopt new rule WAC 390-17-019 Contribution Limits to Affiliated Committees.

The motion passed.

Review of Delegation of Authority

Evelyn Fielding Lopez presented the updated Delegation of Authority protocol for the agency.

Ms. Lopez noted that the discussion regarding the Delegation of Authority related to one of the Commission's new rules allowing for enforcement alternatives. WAC 390-12-200 includes a provision that the Executive Director may delegate authority to subordinates, including authority for authorizing enforcement alternatives, consistent with agency delegation of authority protocols as adopted by the Commissioners. When this proposed rule was considered by the Commission, because it included delegation authority, the Commission stated that it wanted to review the Delegation of Authority policy prior to the new rule taking effect, to make sure the delegation was consistent with the Commission's expectations. Staff agreed to bring back a proposed updated protocol for Commission review and adoption prior to the new rule taking effect. The PDC's Delegation of Authority protocol had not been updated since November 4, 2014.

Ms. Lopez noted that prior to the meeting; she had provided an updated draft Delegation of Authority in a similar format to the one adopted in 2014, and that Commissioner Levinson has provided feedback and suggested changes.

Ms. Lopez asked the Commission to consider adopting the version that had been submitted with the understanding that she will work with legal counsel and come back with a new delegation of authority for the Commission to review if changes are needed.

Commissioner Levinson summarized some changes the

Commission might want to consider, including that the Delegation should use job titles rather than the names of employees, there should be a provision as to how Commission approval would occur prior to the Delegation Authority being used, how the Commission is to be notified when the Delegation is ended and standards for reporting on any decisions that are made under the Delegation protocol.

The Commission asked that staff address the noted changes and present a revised version to the Commission for review at a future meeting. Ms. Lopez agreed to return with a new draft for either the May or the June meeting.

Jennifer Hansen presented reporting modification requests to the Commission for consideration.

Ms. Hansen stated that Judge Bassett is requesting a reporting modification that would exempt him from disclosing his personal residential address information, including street address, parcel number, or legal description, on his Personal Financial Affairs Statement covering the last 12 months.

As a sitting superior court judge, Judge Bassett is concerned for his safety if his home address is made public.

Staff recommended approval.

Moved by Commissioner Bridges, seconded by Commissioner Levinson that:

The Commission grant the partial reporting modification as requested, finding that literal application would cause a manifestly unreasonable hardship on the applicant and that a limited modification would not frustrate the purposes of the act.

The motion passed.

Ms. Hansen stated that Ms. Durkan is requesting a reporting modification that would exempt her from listing the business customers that made payments of \$12,000 or more to the law firm of Hillis Clark Martin & Peterson, PS, during 2015.

Ms. Durkan is a partner at Hillis Clark Martin & Peterson, PS where she has less than 10% ownership and holds the title of "Vice President" and "Director," but does not participate in day-to-day management decisions, major firm decisions, budget decisions or changes to firm policies.

Ms. Durkan also requested a retroactive reporting modification that would exempt her from listing the business customers that made payments of \$12,000 or more to the

Reporting Modifications

- *Jeffrey P. Bassett* – Superior Court Judge, Kitsap County

Motion 16-21

- *T. Ryan Durkan* – Regent, Washington State University

law firm of Hillis Clark Martin & Peterson, PS, during calendar years 2011, 2012, 2013 and 2014.

Ms. Durkan stated that if any of her firm's clients were before Washington State University on any matter in which she had decision-making authority, she would disclose the relationship and recuse herself.

Staff recommended approval.

Motion 16-22

Moved by Commissioner Bridges, seconded by Commissioner Levinson that:

The Commission grant the partial reporting modification as requested, finding that literal application would cause a manifestly unreasonable hardship on the applicant and that a limited modification would not frustrate the purposes of the act.

The motion passed.

- *Michael R. Scott* – City Council Member, City of Bainbridge Island

Ms. Hansen stated that Mr. Scott is a partner of Hillis Clark Martin & Peterson, PS. He has less than 10% ownership and holds the title of "Vice President" and "Director," but does not participate in day-to-day management decisions, major firm decisions, budget decisions or changes to firm policies.

Mr. Scott requested a reporting modification that would exempt him from listing the business customers that made payments of \$12,000 or more to the law firm of Hillis Clark Martin & Peterson, PS, during 2015.

Mr. Scott also requested a retroactive reporting modification that would exempt him from listing the business customers that made payments of \$12,000 or more to the law firm of Hillis Clark Martin & Peterson, PS, during calendar year 2014.

Mr. Scott stated that during 2015, Hillis Clark Martin & Peterson employed 78 employees total, including 42 attorneys, and performed legal work for more than 900 clients.

Mr. Scott stated there were 187 clients that paid fees of more than \$12,000 in 2015.

Staff recommended approval.

Motion 16-23

Moved by Commissioner Bridges, seconded by Commissioner Levinson that:

The Commission grant the partial reporting modification as requested, finding that literal application would

cause a manifestly unreasonable hardship on the applicant and that a limited modification would not frustrate the purposes of the act.

The motion passed.

Staff Reports

Executive Director

- Strategic Plan

Evelyn Fielding Lopez provided an update on the agency strategic plan.

Ms. Lopez noted that the process of developing the proposed strategic plan for the PDC began when the Commissioners held a half-day retreat at the end of January. At that retreat, the Commissioners, working with PDC executive managers and an outside facilitator, created a list of 13 outcomes and 56 objectives or ideas. The outcomes and goals were combined into a proposed 18-month strategic plan.

When the draft plan was presented to the Commissioners in March there were concerns that the plan was more of a work list than a strategic plan, and that the plan with 6 goals, 14 objectives, and 90 action items might be overwhelming for staff.

Returning with a reformatted plan, Ms. Lopez noted that while this is a large plan with many pieces, it contains items that are important for the agency to do within the next year. The idea is to start with the plan, and then if some of the items cannot be accomplished, they would be addressed in the following year as well.

Commissioner Levinson noted that Goal VI of the plan (the PDC will build its reputation as active, relevant, customer friendly, and respected across the state of Washington) was more inward facing rather than focusing on service to the public. Ms. Lopez explained that it was important to have strong internal systems and a positive public reputation in order to provide the best service to the public.

Commissioner Levinson asked to have that language added to the goal to reflect that public orientation for Goal VI, and Ms. Lopez agreed to make those changes.

Motion 16-24

Moved by Commissioner Levinson, seconded by Commissioner Bridges that:

The Commission adopt the strategic plan as presented with the modification suggested to Goal VI.

The motion passed.

- Position Description Plans (PDP)

Ms. Lopez continued her staff report and updated the Commission on the recent Performance Development Plans

(PDP) and the interim review check-in meetings that have occurred in April. Staff continue to meet goals that were established in the individual plans.

- Budget Update

Ms. Lopez reviewed the recent issue of the Attorney General legal costs, and the over-expenditure of the allocation for legal services for this fiscal year. Ms. Lopez is continuing to meet with the Attorney General's Office and the Office of Financial Management to discuss possible solutions.

- Guidance

Ms. Lopez discussed an issue brought to the PDC's attention by Senator Roach just prior to the meeting during an enforcement hearing. Sen. Roach stated that there has been discussion in the initiative committee community that the PDC had advised that the paper ballot initiative signature petitions should have sponsor identification on them as if they were political advertisements. Senator Roach indicated that she had received calls from both Tim Eyman and SEIU with concerns about the issue because initiative petitions had not been considered political advertising and did not have sponsor identification. The Commission has not looked at this issue previously and has not determined whether initiative petitions are advertisements.

Ms. Lopez explained that she told Senator Roach that this is not something that is currently an enforcement matter; this is an issue that developed through a discussion between PDC staff and the Secretary of State's office. PDC staff were clear that at this time the issue would not be more than a discussion, with the possibility that the issue would come to the Commission for consideration as to whether political advertisement rules should apply to initiative petitions, and if so, what sort of guidance the Commission should provide to the regulated community. It is not the Commission's practice to make new rules or change rules in the middle of the election period.

- Compliance

Ms. Lopez provided a status update on compliance cases. She stated that staff are making good progress on complaints and cases.

Commissioner Levinson asked the staff to implement a protocol in which staff also always detail in enforcement reports whether the respondent is in compliance in toto with all PDC rules and laws, not just with the aspect of regulation at issue or for the time period raised in the complaint.

Ms. Lopez will determine the best way for staff to implement this process, and will report back to the Commissioners.

Jacob Berkey reported on the process and outcomes of the recent lobbyist group enforcement activity in which lobbyists

who did not complete the filing requirements for January and/or February of 2016 were sent warnings.

Commissioner Levinson asked if the PDC was also notifying the employers that a Lobbyist was not reporting the required information.

Ms. Lopez stated that this is not currently being done, but could be considered in addition to the notification process if the warning letters are not effective in bringing the lobbyists into compliance.

Mr. Berkey reported on the status of the cases and guidance inquiries that are tracked in the compliance "FreshDesk" system. 280 case/complaint tickets have been processed and 255 have been closed. Many of the tickets are inquiries for filer assistance, or requests for other guidance.

- Penalty Tracking

Jana Greer reported on the new penalty tracking process that the Commission had requested the staff institute so that there could be more transparency and accountability. The process with the Department of Enterprise Services (DES) has been in development for over a year. The Commissioners had also requested more detailed and regularly updated reports on penalties and payments.

Ms. Greer stated that the process using DES as the billing entity is showing good signs of working. The individuals who have been assessed a penalty in recent cases been notified of the penalties in a timely manner, and have been responding with payment or requesting to make payment arrangements.

DES continues to consult in developing and refining the process, including providing notification of those cases where no payment has been received and are past due.

Ms. Greer noted that, as the Commissioners had requested, the information on penalties assessed and payments received is being added to the PDC Website. She will continue to provide updates to the Commission on the changes to the process, and asked for feedback on the information provided to the Commissioners in the penalty tracking chart.

Chief Technology Officer

James Gutholm reported on the new PDC website. He noted that the rollout of the website went extremely well.

He discussed comments and feedback received about the website.

Customer Service

Lori Anderson reported that staff are preparing for the May filing week when candidates file to get their names onto the

ballot. The PDC staff are in regular contact with the staff at the Secretary of State's office in preparation for filing week, and during that week. This year the data entry staff will run reports daily to check on candidates who have filed for office and to compare with PDC campaign registration records to develop the list of campaigns that have not filed C1 registration reports and F1 personal financial disclosure reports.

Executive Session

The Commission went into Executive Session at 12:05 p.m. to discuss pending and potential litigation with legal counsel. Possible action regarding pending litigation following the executive session.

The Commission returned to the meeting at 1:05 p.m.

Enforcement

Aaron Reardon, PDC Case 12-160
PDC staff alleges that Aaron Reardon, former Snohomish County Executive, violated former RCW 42.17.130 by using the facilities of Snohomish County to assist his 2011 re-election campaign.

Commissioner Asay noted that Aaron Reardon was not present at this meeting, but has submitted arguments which the Commission has reviewed.

Chad Standifer, Assistant Attorney General, represented PDC Staff and presented arguments for the Commission's consideration.

Commissioner Bridges noted that he had reviewed all of the materials submitted for this case, and summarized his conclusions. Commissioner Bridges stated that with regard to Mr. Reardon's use of his County-issued cell phone, staff have established that Mr. Reardon sent and received numerous calls and text messages from and to his paid campaign consultants. None of these paid consultants had a contract with, or were paid by, the County. Mr. Reardon provided no credible explanation as to the nature of these calls or dramatic increase in the number of call over the prior non-election years.

Commissioner Bridges further stated that with regard to Mr. Hulten, staff have established that Mr. Hulten used his County laptop in furtherance of Mr. Reardon's 2011 re-election campaign. Mr. Reardon hired Mr. Hulten in early 2011. Several documents recovered from Mr. Hulten's laptop were related to Mr. Reardon's 2011 re-election campaign opponent and were outside of Mr. Hulten's normal County duties. The document properties establish that Mr. Hulten worked on these documents during his normal working hours. Mr. Reardon supervised Mr. Hulten, and on at least one occasion, re-wrote a negative evaluation of Mr. Hulten. Mr. Reardon, both as a candidate and as a supervisor, failed to monitor Mr. Hulten's campaign activities which occurred while Mr. Hulten was working for

the County.

Finally, Commissioner Bridges concluded that PDC staff did not establish that Mr. Reardon used his County office space for campaign purposes.

Motion 16-25

Moved by Commissioner Bridges, seconded by Commissioner Levinson that:

The Commission find that Aaron Reardon committed multiple violations of former RCW 42.17.130 when he: (1) used his County-issued cell phone in furtherance of the Respondent's re-election campaign for Snohomish County Executive, and (2) hired, and then failed to monitor, Snohomish County employee Kevin Hulten, who likewise used County resources in furtherance of the Respondent's re-election campaign.

In light of Mr. Reardon's multiple violations, the Commission issues a penalty in the amount of \$4,200.

The motion passed.

The meeting adjourned at 1:25 p.m.

June 23, 2016

Adjourn

Approved