

State of Washington
PUBLIC DISCLOSURE COMMISSION
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MINUTES – Regular Meeting

9:30 a.m. | October 27, 2016
Evergreen Plaza Building, Room 206
711 Capitol Way
Olympia, Washington

Commission Members Present

Anne Levinson, Chair; John Bridges, Vice Chair; Jack Johnson, Member, Katrina Asay, Member.

Staff Present

Evelyn Fielding Lopez, Executive Director; Penny Allen, Assistant Attorney General; James Gutholm, Chief Information Officer, Lori Anderson, Communications and Training Officer; Bill Lemp, Lead Investigator; and Jana Greer, Executive Assistant.

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

No public comment

Meeting minutes

September 22, 2016 regular meeting minutes

Motion to adopt the minutes: Commissioner Johnson, Commissioner Bridges seconded.

Motion passed.

Rules | [PDC Mtg Video](#) |

Director Lopez discussed the latest iteration of the proposed language for rule change regarding 45-day citizen action letters.

The 45-day citizen action letter process continues to evolve: (1) complaints where the Attorney General's Office (AGO) has requested a review and opinion/recommendation from the Commission; (2) some 45-day citizen actions complaints have started with several PDC complaints filed first or simultaneously with the AGO; and (3) recently a number of new 45-day citizen action complaints have been filed that point out very small technical violations in reporting.

The "power" of the 45-day citizen's actions complaint will continue to evolve as people learn more about this, and until there is some type of legislative change to the statute it will continue to grow.

Lori Anderson presented draft proposed language to the Commission for discussion and possible approval for rules under consideration.

New WAC 390-05-195

PDC receives mailed reports that do not have a post office cancellation mark which is used to identify the received date in accordance with RCW 42.17A.140(1). The Commission had expressed interest in establishing a timely filing presumption through rule-making.

Proposed New WAC 390-05-195 establishes that any mailed report received within five business days of its due date would be timely filed and that mailed reports will not substitute for a report that must be electronically filed.

Proposed updates/changes to enforcement rules

Language presented would update the procedures for citizen action referrals, repeal the current brief enforcement penalty schedules and replace them with a single schedule, and implement legal counsel's recommendation to modernize time period calculations for requests for reconsideration of decisions, making consistent the use of "day" across Title 390 WAC, and align WAC 390-37 with the state's model rules.

- Amend WAC 390-37-041 "Enforcement procedures—Allegations submitted to the attorney general's office and/or prosecuting attorneys".
The proposed changes to language would educate people by informing them that filing a Citizen Action complaint is different from filing a complaint with the Commission. Commissioner Johnson recommended adding guidance for staff that would articulate what threshold these items need to reach before the Commission can recommend action. Chair Levinson suggested that a clarification of language be made in section 1(c) to better explain that in these types of complaints the fact that the Commission takes action to refer it back to the Attorney General or prosecutor who referred it does not mean it was egregious or a criminal matter. Instead it is simply that the Commission is charged with reviewing it, and then referring it back to whichever entity referred the matter to the PDC. Chair Levinson asked about section 2(b) ...review may be provided at any time... She noted that the review is included when the referral is provided back. She suggested adding something about the basis for the Commission's recommendation to the language. Ms. Anderson noted that Assistant Attorney General Linda Dalton reminded staff of a situation where a 45-Day letter had been referred and the staff investigation had occurred but the Commission did not have quorum available in order to have a special meeting. She wanted to make sure that if this occurs in the future that the AG can receive the staff report.
- Amend WAC 390-37-050 "Enforcement procedures—Respondent's notice of complaint. Removing the word 'Business' to clarify 'days'". The word 'day' will refer to a calendar day unless otherwise defined.
- Amend WAC 390-37-060 "Enforcement procedures—Alternative responses to noncompliance—Investigation of complaints—Initiation of adjudicative proceeding."
These are the procedures the Commission follows when a complaint is received. The amended language would clarify that a 10-day hearing notice is given for a complaint filed with the Commission.
Repeal subsection (5) because it is no longer consistent with the public records act.
- Amend WAC 390-37-100 "Enforcement Procedures – Conduct of hearings (adjudicative proceedings)". A change made to (2)(g). The Commission had asked Counsel to compare the rule to the Administrative Procedures Act (APA) to make sure the Commission has the authority to call additional witnesses and request additional exhibits that are necessary to complete the record and receive such evidence, subject to the full opportunity for cross examination and rebuttal by all parties.
Counsel suggested removing subsection (8) because it does not really have to do with any enforcement proceedings. It deals with the 45-Day letter or with the fact the Commission can refer to the AGO if it believes the penalty should be more than \$10,000. She suggested this be repealed from this section to eliminate confusion. She will work with staff to

suggest additional language pertaining to referring cases where the penalty would be more than \$10,000 to the AGO.

- Amend WAC 390-37-105 “Prehearing conference – Rule”. Counsel suggested removing the phrase ‘hearing notice’ and adding consolidation and determination of the witnesses. Counsel suggested removing the dates, as deadlines do not need to be included in proposed orders.
- Amend WAC 390-37-132 “Enforcement hearings (adjudicative proceedings)—Depositions”. Proposed language would change “7 Calendar” to “5 Business” days.
- Amend WAC 390-37-136 “Production of documents and use at hearing and other hearing procedures (adjudicative proceedings)”. Proposed change would strike the word “calendar” in subsection (3)(a).
- Amend WAC 390-37-142 “Brief enforcement hearing (adjudicative proceeding) – Penalty schedule”. Substantive change to subsection (6) clarifying that within 10 days the presiding officer gives the parties a brief written statement of the reasons for the decision and information about any internal administrative review available. This language will make the rule consistent with the Administrative Procedures Act (APA). Counsel and staff will look at whether presiding officer needs to delegate to Executive Director to send out written decision, but does not need to be in this WAC.
- Amend WAC 390-37-144 “Brief adjudicative proceeding—Administrative review procedures”. Proposed change made to subsection (3) and (4) removing the word “business”.
- Amend WAC 390-37-150 “Reconsideration and judicial review of decisions”. Proposed change made to sub-section (3) changing twenty-one days to ten days after, and removing the word “Business”.

Penalty schedules that are being repealed

Ms. Anderson stated that for the failure to timely file reports the Commission had requested that it be revised to say failure to file accurate and complete reports as well. That language has been added.

- Repeal WAC 390-37-155 Electronic filing brief enforcement hearing penalty schedule;
- Repeal WAC 390-37-160 Statement of financial affairs (F-1) penalty schedule;
- Repeal WAC 390-37-165 Candidate registration statement (C-1)/candidate statement of financial affairs (F-1) penalty schedule;
- Repeal WAC 390-37-170 Lobbyist monthly expense report (L-2) penalty schedule; and
- Repeal WAC 390-37-175 Lobbyist employer report (L-3) penalty schedule

New Rule

- New WAC 390-37-143 “Brief enforcement hearings (adjudicative proceeding) – Penalty schedule”.

Ms. Anderson presented draft language for a combined penalty schedule as requested in the Commission’s discussion regarding the draft schedule at the October 19 Special Commission meeting. The Commission requested staff incorporate the current penalty schedules into one, also including other potential violations that would be heard in a brief enforcement setting.

Staff recommended the Commission approve the draft language for the rules as discussed and revised.

Motion 16-56 : Moved by Commissioner Bridges, seconded by Commissioner Johnson that:
The Commission approve language that amends the WAC’s as discussed.

The motion passed.

Possible Expedited Rule-making

Ms. Anderson noted, as a follow-up to Counsel recommendation that the Commission amend its rules to clarify and make consistent the use of “business” and “calendar” days as well as adopting a general definition of the word “day” and phrase “business day”, staff believes the recommended changes can be effected using the expedited process.

Staff recommended the Commission approve beginning expedited rule-making.

Motion 16-57 : Moved by Commissioner Johnson, seconded by Commissioner Bridges that:

The Commission supports using the expedited rule-making process in this matter.

The motion passed.

Reporting Modification Request [|PDC Mtg Video|](#)

Jennifer Hansen presented Anne Cowles request for a reporting modification exempting her from disclosing the business and other governmental customers that paid \$12,000, during the previous 12 months, to Cowles Company, of which her spouse is President and part owner.

Ms. Cowles is also requesting a reporting modification that would exempt her from disclosing the parcel numbers or legal description of raw and timber land owned by Cowles Company and from disclosing the legal names of family trusts of which she is a trustee.

Ms. Cowles stated that it would cause a hardship to provide a list of reportable business and other governmental customers of Cowles Company due to confidentiality agreements and that disclosure would place them at a competitive disadvantage. She stated that it would cause a hardship to provide a list of the raw and timber land owned by Cowles Company due to the volume of properties. Lastly, Ms. Cowles stated that to identify the individual family trusts would infringe upon the personal privacy of various family members, potentially exposing them to unknown harm.

Motion 16-58 Moved by Commissioner Bridges, seconded by Commissioner Asay 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.

Legislative Stakeholder Feedback [|PDC Mtg Video|](#)

Director Lopez reported on the stakeholder feedback on the various legislative ideas and packages. A variety of feedback has been received.

Feedback from a lobbyist with the Associated Press was that he would not be able to support the section of the PDC F1 agency request bill which provides for sheriffs, prosecutors, and judges to only be required to list their city and county residence rather than the address on properties that are their home.

Director Lopez asked the Commission if the agency bill request should be modified at this time.

The Commissioners stated they do not want any modification made at this time.

Director Lopez met with one of the Senate Republican Leaders. He expressed a concern that the bill titles be tight and very specific. He would not want to see the bills be used as a vehicle for loading on their other personal campaign finance issues such as “dark money”.

Chair Levinson stated that the agency will want to be deferential to the legislative sponsors and support what would work for them.

She noted that we have important budget, policy, and legal decisions to be made. We need to do be able to do this work without undue interference and without fear of making tough decisions, regardless of one’s party affiliation. We should not shy away from advocating for any language in a bill that will help us to serve the public better.

Commissioner Johnson noted that our job is to give the legislature the best opportunities to write the best laws they can. It is our job to make the best recommendations we can.

Director Lopez shared and discussed a letter received signed by the Senate Majority Leader and the House Minority Leader.

FreshDesk Demonstration | [PDC Mtg Video](#)

James Gutholm demonstrated the FreshDesk application, an application used for PDC case management. Prior to FreshDesk, the staff was engaging with customers via email and telephone conversations without a good way to track items agency-wide.

Mr. Gutholm provided a live demonstration, stepping through the application showing key functions and how they work. This system has transformed the way PDC does business and interacts with customers. Customers are really getting the benefit of this cohesive experience.

Mr. Gutholm explained that this system is also integrated with the telephone system that allows all requests for help that comes in by phone call to be tracked to ensure follow up just as with email or written requests. Director Lopez mentioned that this has led to staff removing direct telephone numbers from agency materials so that the calls come into the system as they should. Chair Levinson stated that some members of the public and regulated community may view this as not as helpful as having a direct phone number and see it as less customer-friendly. She requested staff add language to materials explaining why this approach will help the PDC staff be able to respond quickly and accountably.

Next Steps: Director Lopez will add language to relevant materials to explain because information is filed electronically and staff can resolve and track the issue faster if it comes in through FreshDesk.

Executive Session | [PDC Mtg Video](#)

The Commission went into Executive Session at 12:00 p.m. 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, and review of performance of public employees.

Possible action regarding pending litigation, or other matters properly discussed during executive session, will be taken following the executive session.

The Commission returned to open session at 1:03 p.m.

Report to the Commission 45-Day Citizen Action Complaint | [PDC Mtg Video](#)

Bill Lemp presented *Olympia City Council members Cheryl Selby, Jessica Bateman, Nathaniel Jones, Clark Gilman, Julie Hankins, Jeannine Roe, and Jim Cooper*, **PDC Case 8341**,

involving alleged violations of RCW 42.17A.555 by using or authorizing the use of City of Olympia facilities to oppose a ballot proposition submitted to the City by “Opportunity for Olympia” for inclusion on the November 8, 2016 general election ballot.

Dan Barber, Olympia City Attorney, was present and addressed the Commission.

Staff recommended that the Commission communicate to the Attorney General that the City of Olympia did not violate RCW 42.17A.555 when it sought judicial review of a proposed ballot measure to determine if the measure was within the scope of the City’s initiative power.

Staff further recommended that the Commission recommend the Attorney General take no action on the 45-day Citizen Action Complaint filed by Knoll Lowney on behalf of “Opportunity for Olympia”.

In addition, Staff recommended that the Commission, review Interpretation 91-02 to determine if it should be amended to cover a public agency’s use of public facilities/funds related to placing, or not placing, a proposition on the ballot.

Motion 16-59 Moved by Commissioner Johnson, seconded by Commissioner Bridges that:

The Commission return this to the Attorney General with the recommendation that the AG not take action.

The motion was approved.

Director Lopez suggested that staff work on the review of PDC Interpretation 91-02 and bring it back to the Commission by the January Commission meeting.

Next Steps:

Staff to review of PDC Interpretation 91-02 and bring it back to the Commission by the January Commission meeting.

Staff Reports | [PDC Mtg Video](#)

Executive Director

Director Lopez reported on the PDC budget submission for 17-19. She asked the Commission for input on placing an additional budget request for staffing and her concerns.

At the request of the Chair, Director Lopez asked for additional information on how to request additional funding to recruit to fill the recent vacancies and provide sufficient staff at the appropriate classifications to meet the agency’s mission. Ms. Lopez stated her inclination is to not ask for additional funds because she is concerned about the large request for funds for legal services that the agency needs for enforcement litigation.

Commissioner Johnson stated that we need to ask for the resources that we in good faith need. Legal services costs are not something the agency can absorb. It would be appalling to be told that because of legal expenses beyond our control the answer is to cut enforcement staff in a fundamental public interest agency.

Chair Levinson stated that the integrity of the agency and the work we do depends on having the capacity to do it effectively. This agency has been under-budgeted and understaffed for far too many years. It is important to have sufficient staff with sufficient salary levels and resources.

Director Lopez reported on her work on the advisory group created by the Seattle Ethics and Election Commission to help them design the Seattle democracy voucher program. She noted

that work highlighted a question about the state's anti-bundling statute. Community groups were very strongly involved in getting this local initiative passed with the understanding that they would be intimately involved in their communities collecting the vouchers. The "collecting" is the bundling issue. The PDC could ultimately decide that the democracy voucher program is something different than gather checks for contributions and therefore should not be subject to the bundling statute, but the issue needs to be analyzed.

Director Lopez is anticipating a request regarding this matter.

Enforcement

October 2016 - 26 new complaints were received. Most of them are related to the last week of the election issues.

There is an individual who is filing many complaints with the PDC and then forwarding them as well to the AG as 45-Day Citizen Action letters. This has elevated the number of 45-Day letters under review at the AGO.

Other recent complaints relate to speaking the party preference in video advertisements. It has been a PDC interpretation that for video advertising the candidate is to clearly speak their name and party preference. Some argue that the statute does not require this.

Director Lopez stated that staff will send a letter to the complainants stating that the PDC has noted widespread lack of compliance and there appears to be confusion on what is required. The PDC will plan to look at this after the election and offer clear guidance, and in the meantime will not take any action on complaints related to this.

Next Steps:

Staff will review PDC statute regarding speaking party preference in a campaign related video advertisement.

Chief Information Officer

James Gutholm reported on the work with stakeholders regarding the open data query projects. There are currently three projects; Open data, Fuzzy or google search, Specific search. The IT division will begin the open data search first; it is a good foundation to start with.

A new application/service has been implemented, Sendgrid. This service allows customers to sign-up for specific information and updates from the PDC.

Next Steps:

IT will send out a notification to users to let them know there is a way to now sign up for emails and alerts from the PDC.

Communications and Outreach

Lori Anderson has accepted a position with the Department of Early Learning as of November 1, 2016.

The Commission thanked Lori Anderson for her leadership and hard work at the PDC.

The meeting adjourned at 2:02 p.m.

Minutes approved December 8, 2016