

State of Washington
PUBLIC DISCLOSURE COMMISSION
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MINUTES – Regular Meeting

9:30 a.m. | February 28, 2019

Evergreen Plaza Building, Room 206

711 Capitol Way

Olympia, Washington

Commission Members Present

Anne Levinson, Chair; David Ammons, Vice-Chair; Bill Downing, member; Russell Lehman, member.

Staff Present

Peter Lavallee, Executive Director; BG Sandahl, Deputy Director; Kim Bradford, Communications and Outreach Director; Sean Flynn, General Counsel; James Gutholm, Chief Information Officer; Jana Greer, Administrative Officer; Toni Lince, Customer Service Representative; Kurt Young, Compliance Officer; Fox Blackhorn-Delph, Compliance Coordinator; Jennifer Hansen, Compliance Officer; John Meader, Assistant Attorney General; and Chad Standifer, Assistant Attorney General.

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

Public Comments | [PDC Meeting Video](#)

- Cheryl Aichele (via telephone)

Cheryl Aichele suggested the Commission have discussions about the need for PDC audits. Auditing would allow for issues to be found and addressed by the filers before a complaint is filed. She sees many flaws in the current system and feels that the only way to get a corrected action or answer to certain questions is to file a complaint with the PDC.

Commission Chair Levinson asked Ms. Aichele to submit her suggestions from today and any additional testimony via email to PDC@pdcc.wa.gov. These comments will be forwarded to staff and the Commission for further review and consideration.

- Tim Eyman (in-person)

Tim Eyman asked the Commission to grant an exception for electronic reporting as required by 42.17A.245. He stated that this was a request for modification as allowed under RCW 42.17A. 120.

Mr. Eyman sought to amend reports from 2017, adding in-kind contributions. His concern is that he will be fined if he is not able to file in a timely manner. At this time Mr. Eyman is not able to contact the past Treasurer and does not have access to the past reports. He is asking that it be noted that he has been in contact with the PDC attempting to rectify the issue.

Mr. Eyman requested a hardship exemption and asked the PDC to give guidance on how to file the identified reports.

Chair Levinson informed Mr. Eyman that the modification process set forth in RCW 42.17A.120 allows filers to request a suspension or modification of the contents of a required report, not the manner in which the report is filed. The Chair also explained the process required for those reporting modification requests to be heard by the Commission. If a filer is requesting an exemption regarding electronic filing, that is not a reporting modification request. The Commission may grant an exemption for electronic filing on a case-by-case basis for candidates whose committees lack the technological capacity to file electronically. The Chair indicated that the Commission would delegate the assessment of whether a hardship exemption was warranted in this instance to the Executive Director.

Next Steps/Follow-up: Executive Director Lavallee will review Mr. Eyman's request to determine if the matter warrants a hardship exemption.

- Andrew Saturn (in-person)
Andrew Saturn, a transparency advocate, shared concerns about the definition of "commercial advertisers" as currently defined in [WAC 390-18-050](#) and [RCW 42.17A.005\(11\)](#), pertaining to radio, TV stations, print shops, newspapers, and "other old-media". He added that these methods are becoming the preferred campaign technologies of the past, campaigns are now relying on freelance consultants and graphic designers or contracted third parties for design and distribution of campaign information.

Mr. Saturn requested that the Commission review the language of [WAC 390-18-050](#) and consider redefining the definition.

Chair Levinson asked Mr. Saturn to submit his written testimony he offered at the meeting via email to PDC@pdc.wa.gov, for review by the Commission and staff. PDC staff will review and assess to determine if any action is needed.

Next Steps/Follow-up: PDC staff will review the request and update Mr. Saturn on the status of the review and any next steps that may be needed.

Meeting Minutes | [PDC Meeting Video](#)

The Commission considered approval of the January 24, 2019 regular meeting minutes.

MOTION 19-07 Moved by Commissioner Ammons, seconded by Commissioner Downing that:

The Commission approve the January 24, 2019, regular meeting minutes as presented.

The motion passed 4-0.

Rules Public Hearing | [PDC Meeting Video](#)

Chair Levinson opened a public hearing at 9:55 a.m., a formal rulemaking hearing to allow for public participation and comments to implement permanent rules for [SB 5991 Political Campaign Financing Disclosures](#).

The Chair explained that a draft of the proposed changes was posted on the PDC website. All comments received, in writing, email, or personal testimony by the cut-off date will become part of the official rulemaking record.

Sections of WAC addressed are [390-05-521](#); [390-05-535](#); [390-16-013](#); and [390-16-013A](#).

Public Testimony

David Streeter, Public Policy Director, Washington Non-profits, elaborated on key recommendations raised in his written testimony he submitted previously.

He recommended that the proposed rule, [WAC 390-16-013](#), be clarified to state that dissolution is for PDC purposes only. It is important to clarify this because the term dissolution in the non-profit context means dissolving the non-profit outright.

The concern is that if this clarification is not included, this could cause non-profits to avoid exercising their rights to participate in ballot measure work.

Mr. Streeter also recommended that the PDC include disclaimers on the C-1 and C-8 forms to make clear that the filers should also verify with the IRS what types of campaign activities may be conducted. Filers could otherwise mistakenly conclude by submitting these forms the non-profit organization is then permitted to engage in campaign activity regardless of their IRS status.

Both the C-1 and C-8 forms contain no reference to ballot measure campaigns. Filers could erroneously interpret this as the forms do not apply to ballot measures. Mr. Streeter recommended including this information on the forms.

Also unclear on the C-8 form is the definition of what constitutes an in-kind contribution. He asked that a clear definition and example be added to the form.

Dmitri Iglitzin spoke on behalf of SEIU 775; FUSE Washington; Planned Parenthood Votes Northwest and Hawaii; and Washington Conservation Voters.

Mr. Iglitzin stated that in addition to his written comments he submitted earlier, he wanted to highlight the concern in the non-profit community over what types of payments, specific to [WAC 390-51-521](#), appropriately qualify as payments received.

He identified categories of payments that in his view are not required to be disclosed:

1. Money received by a 501(c)(4) that would never be used for electoral activity in Washington state.
2. Passive investment gains, a fund that appreciate or depreciates.
3. The sale of goods or services resulting in payments from third parties of \$10,000 or more.
4. Aggregated dues.

Chair Levinson closed the public hearing at 10:10 a.m. and returned to the regular meeting for further discussion of the proposed rules.

Commissioner Lehman suggested further editing for proposed language in [WAC 390-16-013A](#) in reference to the option of electronic filing. His concern is that the public may be confused by the phrase “option”. He also suggested refining ([WAC 390 -05-535](#)), regarding eligibility for 501(c)(3) status. Eligibility is determined by the IRS; the PDC cannot and should not determine eligibility under 501(c)(3).

Executive Director Lavallee noted that the “option” language refers to whether the Commission will give the option to file electronically or not.

Chair Levinson suggested that the substitution of the word “application” in place of “option” may be clearer for filers. The staff will review the language and suggested changes discussed.

Deputy Director Sandahl reviewed the rulemaking process, timing, and deliverables.

Next Steps/Follow-up: Staff will compile all stakeholder input received, synthesize comments, and provide the input along with proposed next drafts to the Commission for review no later than March 12. Staff will then do another draft and make it again available to the stakeholders so that any additional input can be provided to the Commission for consideration and possible approval of the rules at the March 28th regular meeting.

Interpretations | [PDC Meeting Video](#)

Discussion of revised [Interpretation 14-01, Campaign Loans](#).

Sean Flynn, General Counsel, presented for Commission consideration and possible approval, revisions made to [Interpretation 14-01](#). The purpose of the revisions was to clean-up and make the Interpretation read more clearly. Chair Levinson asked the staff and AAG to review whether the clear, cogent and convincing language was consistent with statute, and to change the phrase “treasurer of record” to “treasurer”. Other copy edits were discussed.

MOTION 19-08 Moved by Commissioner Ammons, seconded by Commissioner Downing that:

The Commission approve the updated Interpretation as discussed.

The motion passed 4-0.

Legislative Update | [PDC Meeting Video](#)

BG Sandahl, Deputy Director, and Sean Flynn, General Counsel reported on the status of legislation that would impact or is related to the PDC.

- [HB 2938](#) and the 22W Transparency Fund appropriation.
Deputy Director Sandahl and General Counsel Flynn met with non-partisan legislative staff as well as caucus staff in the House and Senate to discuss the PDC appropriation from the Transparency Fund, providing documents outlining the reasons and needs for the request.

Deputy Director Sandahl will continue to send the weekly legislative report to the Commissioners.

General Counsel Flynn highlighted some of the proposed legislation that may impact PDC.

- [SHB 1067](#) Employment after public service, is a bill that does not impact the PDC in a direct way but does affect the requirements for lobbying activity. The bill is currently in the House Committee.
- [HB 1375](#) Port district campaign contribution limit would extend to all port districts. This bill has passed out of the State Government Operations Committee.
- [SHB 1379](#) Political committee disclosures, has passed out of both committees and is on the 2nd House reading.
- [SSB 5270](#) Election dates and timelines has moved out of the state Senate Committee. PDC is tracking this to make sure if the date of the Primary election changes for state elections that the PDC changes timelines as needed. This change would also limit the session freeze during any special legislative session.
- [SB 5388](#) Campaign treasurers training is at the Senate Ways & Means Committee.

PDC Agency Request Legislation

[SB 5112](#) Concerning the efficient administration of campaign finance and public disclosure reporting and enforcement.

General Counsel Flynn reviewed the proposed substantive changes to [SB 5112](#). All proposed changes submitted to date have been adopted into the substitute bill that has passed out of the House State Government Committee. He explained the different perspectives regarding the amendment addressing payments of fines and fees made at the conclusion of Citizen Action litigation.

Dmitri Iglitzin provided public comment on that proposed amendment. In his view, the proposed language changes existing law regarding who has the obligation to pay those penalties or judgments. He offered to be available for further discussions.

Executive Director Lavalley reported on the issue regarding mailers that went out across the state that had the effect of endorsing, as write-in candidates, individuals who were not running in the election. PDC staff analysis was that the 42.17A did not apply in this case and that the legal standard regarding defamation was also not met. PDC has convened a working group of representatives from the Secretary of State's office and the Attorney General's office to discuss this and any broader issues that are implicated. This work group will be ongoing to allow continued communication among the agencies.

Reporting Modification Requests | [PDC Meeting Video](#)

The Commission conducted a hearing as part of the regular meeting to hear requests for reporting modifications. Jennifer Hansen, Compliance Officer, presented the requests. All applicants waived their right to participate at the hearing.

Commission Chair Levinson stated that she does have working relationships with Ada Healey and with Senator Pedersen, but that it would not keep her from being fair and objective in these matters.

The following individuals requested a new or a renewal of a reporting modification:

NEW

- [Ada M. Healey](#) – Member, State Investment Board [WAC 390-28-100\(b\)](#)
Ms. Healey requested a reporting modification that would exempt her from disclosing the business customers that paid \$12,000, during the previous 12 months, to 505 Union Station LLC and Vulcan, Inc.
- [Jon Lisbin](#) – Candidate for City Council, City of Seattle [WAC 390-28-100\(b\)](#)
Mr. Lisbin requested a reporting modification that would exempt him from disclosing the business customers that paid \$12,000 or more during the previous 12 months to Point It!, Inc., a privately held online advertising agency located in the Seattle area.

RENEWALS

- [Jamie Pedersen](#) – State Senator, 43rd Legislative District [WAC 390-28-100\(b\)](#)
Senator Pedersen requested a renewal of the reporting modification that would exempt him from disclosing the business and other governmental customers, other than state agencies, that paid \$12,000 or more during 2018 to McKinstry Company, LLC, and McKinstry Essention, LLC. Mr. Pedersen serves as Vice President and General Counsel for both entities.
- [Barre Seibert](#) – City Council Member, City of Clyde Hill [WAC 390-28-100\(b\)](#)
Mr. Seibert requested a renewal of a reporting modification that exempts him from disclosing the business and other governmental customers that paid \$12,000 or more during 2018 to Tootsie Roll Industries, Inc. (Tootsie Roll).

MOTION 19-09 Moved by Commissioner Ammons, seconded by Commissioner Downing that:

The Commission grant the partial reporting modifications as requested by Ada Healey; Jon Lisbin; Jamie Pedersen; and Barre Seibert for each reporting period, finding that literal application of the law 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 4-0.

RENEWAL

- [Raymond F. Clary](#) – Superior Court Judge, Spokane Superior Court [WAC 390-28-100\(d\)](#)
Judge Clary requested a renewal of the reporting modification that would exempt him from disclosing his personal residential address.

The Commission took no action on this matter and asked for additional information regarding the specificity of the request.

Next Steps/Follow-up: Staff will contact Judge Clary and request additional information to bring back to the Commission at the March Commission meeting for review and consideration.

The Hearing for Reporting modification requests concluded at 12:02 p.m. The Commission returned to the regular meeting.

Budget Update | [PDC Meeting Video](#)

Chad Johnson, Budget Analyst, Department of Enterprise Services (DES), updated the Commission on the status of PDC budget and expenditures to date.

In addition to his written report, he highlighted that the agency continues to be underspent with the exception of Attorney General expenditures. These expenditures continue to be the largest expenditure for the PDC.

The PDC is relying on supplemental funding to meet AGO expenditures for this fiscal year.

Executive Session

The Commission went in to Executive Session at 12:05 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. Any action regarding pending litigation, or other matters properly discussed during executive session, would be taken following the Executive Session.

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

Enforcement – Request for Reconsideration | [PDC Meeting Video](#)

Fox Blackhorn-Delph, Compliance Coordinator, presented Raymond Holloway's request, PDC Case 38874, for reconsideration to the Commission.

Raymond Holloway participated via telephone.

Mr. Blackhorn-Delph noted that on September 24, 2018, Raymond Holloway, an incumbent Hospital Commissioner for Grant County Hospital District 05, was found in violation of [RCW 42.17A.700](#) for failing to timely file a Personal Financial Affairs Statement (F-1 report) due no later than April 16, 2018, disclosing financial activities for calendar year 2017. At that hearing, a \$250 penalty was assessed.

Mr. Holloway sent payment of \$20 to the Department of Enterprise Services to be applied to the outstanding penalty.

On February 26, 2019, PDC staff received an additional check for \$15 as payment toward the remaining \$230 of the penalty assessed in the October 5, 2018, Initial Order, but have refrained from accepting and depositing this payment pending the outcome of Raymond Holloway's request for reconsideration.

Mr. Holloway asked that due to issues with mail and email service, and medical issues, the remaining penalty amount assessed be reconsidered by the full Commission.

PDC Staff recommended that the Commission suspend \$230 of the \$250 penalty assessed in the October 5, 2018 Initial Order, conditioned upon Raymond Holloway committing no further violations of Chapter [42.17A RCW](#) or [Title 390 WAC](#) for a period of four years from the date of the Final Order.

MOTION 19-010 Moved by Commissioner Ammons, seconded by Commissioner Downing that:

The Commission reconsider the penalty assessed in the October 5, 2018 Initial Order for PDC Case 38874.

The motion passed 4-0.

MOTION 19-011 Moved by Commissioner Ammons, seconded by Commissioner Downing that:

The Commission accept the Staff recommendation and suspend the remaining \$230 penalty on the condition that there are no further violations of Chapter 42.17A RCW or Title 390 WAC for a period of four years from the date of the Final Order.

The motion passed 4-0.

Enforcement Hearing – Commission Consideration of Proposed Stipulation | [PDC Meeting Video](#)
[United Food & Commercial Workers Local 21 PAC, PDC Case 42719](#)

Chad Standifer, Assistant Attorney General, presented a proposed Stipulation as to Facts, Violations and Penalty for the Commission’s consideration and possible approval.

Kurt Young, Compliance Officer was present at the hearing.

Dmitri Iglitzin, Attorney, and Sara Cherin, on behalf of the UFCW President, participated in-person.

Commission Chair Levinson noted that she does know Ms. Cherin and that it will not interfere with her ability to make a fair judgment.

PDC staff alleged that the UFCW 21 PAC violated: (1) [RCW 42.17A.235](#) and [.240](#) by failing to timely file Monetary Contribution reports (C-3 reports) disclosing \$253,210 in monetary contributions received during calendar year 2017; and (2) [RCW 42.17A.235](#) and [.240](#) by failing to timely file Summary Campaign Contribution and Expenditure Reports (C-4 reports) disclosing \$284,564 for total contributions received and \$279,076 in total expenditures made.

Staff recommended acceptance of the proposed Stipulation, the Committee agrees to pay a total civil penalty of \$40,000 with \$20,000 suspended on the following conditions:

The Committee is not found to have committed any further violations of RCW 42.17A or WAC 390 within 4 year of the date of the final order, remains in compliance with all reporting

requirements, and the \$20,000 non-suspended portion of the penalty is paid by the Committee within 30 days of the date of the Final Order in this matter.

MOTION 19-012 Moved by Commissioner Downing, seconded by Commissioner Lehman that:

The Commission accept the Stipulation as to Facts, Violations and Penalty as presented.

The motion passed 4-0.

Strategic Plan | [PDC Meeting Video](#)

Executive Director Lavallee reported on PDC Strategic plan measurements:

- Reviewing internal data in “follow the money” for baseline and increase website use by 5% annually and collect baseline data to report monthly.
In looking at the results from the data collected it was determined that 8 years of data would be needed to draw trends to include the different electoral cycles.
The data collected was from different sections of the PDC website that are accessed and what types of information users are seeking.
- Establishing a baseline to determine where certain email approaches receive better responses.
Emails sent to stakeholders notifying them of a meeting agenda were sent in different formats to determine if the delivery and read rates would differ.
- IT team to survey select websites quarterly to explore new tech developments.
Staff created weekly emails highlighting news articles pertaining to the PDC and campaign finance. These articles often share information from other states and highlight any new tech developments.

Management Team Updates | [PDC Meeting Video](#)

Executive Director | [PDC Meeting Video](#)

Executive Director Lavallee elaborated on the PAC to PAC contribution bill and discussions held with legislators to date. He was asked by legislators to provide a demonstration of weighted averages that could be used to determine top contributors, which he presented to the Commission. Commission and staff discussed the possibility of being granted rulemaking authority in the future for refinement of how top contributors are determined, with further stakeholder input, to be able to provide additional insight to legislators.

Communications, Outreach and Filer Assistance Update | [PDC Meeting Video](#)

Communications and Outreach Director, Kim Bradford, reported on the work the Customer Service and Filer Assistance Team has done. Despite the recent high volume of emails, the team maintained timely response and resolution time of 24 hours. Director Bradford reported on F1 reminders and the inclusion of modification request information in those reminders and the anticipation of more inquiries regarding modifications.

Director Bradford highlighted the training calendar, its schedule for the second quarter of this

year, and anticipation of scheduling more trainings in both Eastern and Central Washington. Nine workshops have been completed to date in 2019 with about 150 attendees.

IT Activity Report | [PDC Meeting Video](#)

Chief Information Officer James Gutholm discussed future business opportunity projects with the Commission and the improvements that could be made if the PDC were to receive funding from the Transparency Fund. One proposed project is automated scanning of the PDC website for errors such as broken links, and typographical errors; the second proposed project is a usability study and eventual redesign focusing on fully integrating disclosure tools and refining navigational aspects of the site.

Chief Information Officer Gutholm spoke about the importance of maintaining I.T. systems in addition to addressing the backlog of other I.T. needs, so the systems do not languish.

Process Improvement Spotlight | [PDC Meeting Video](#)

Kurt Young demonstrated the process improvement spotlight in the Enforcement and Compliance update that the agency has been working on to provide the public with more information on resolved cases.

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

Compliance Officer Young demonstrated the newly reformatted enforcement spreadsheet to provide an update on the status of complaints and enforcement cases from January 15th, 2018 through February 18th, 2019.

Compliance Case Summary:

Total number of active cases as of February 27th, 2019: **284**
Total number of cases closed with no evidence of violations: **13**
Total number of cases closed with a reminder: **27**
Total number of cases closed with a written warning: **53**
Total number of cases closed as a request for technical correction: **1**
Total number of cases closed as a remedial violation: **1**
Total number of cases closed with a statement of understanding: **2**
Total number of cases with action commenced by citizen under RCW 42.17A.765: **1**
Total number of enforcement hearings scheduled & initial hearing held: **1**
Total number of initial hearings held: **6**

Next Steps/Follow Up: Staff to include statistics each month for all categories in enforcement and compliance even if zero.

The meeting adjourned at 2:56 pm.

Summary of Next Steps/Action Items

- Executive Director Lavallee will review Mr. Eyman's request to determine if the matter warrants a hardship exemption for electronic filing requirements.
- PDC staff will review Mr. Saturn's request and update Mr. Saturn on the status of the review and any next steps that may be needed.
- PDC staff will compile all stakeholder and public input on the proposed rules for 5991 and provide the next proposed draft by March 12, with an opportunity for further stakeholder input and a final proposed draft to the Commission for consideration and possible approval at the March, 2019 regular meeting.
- Staff will contact Judge Clary and request additional information so that his modification request can be heard at the March, 2019 regular meeting.
- Staff will include statistics each month for all categories in enforcement and compliance even if zero for that month.

Approved March 28, 2019.