



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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TO: Commission Members

FROM: Jacob Berkey, Compliance Coordinator

RE: **Compliance Division Complaint and Investigation Flow Chart**

Agenda Item and Background

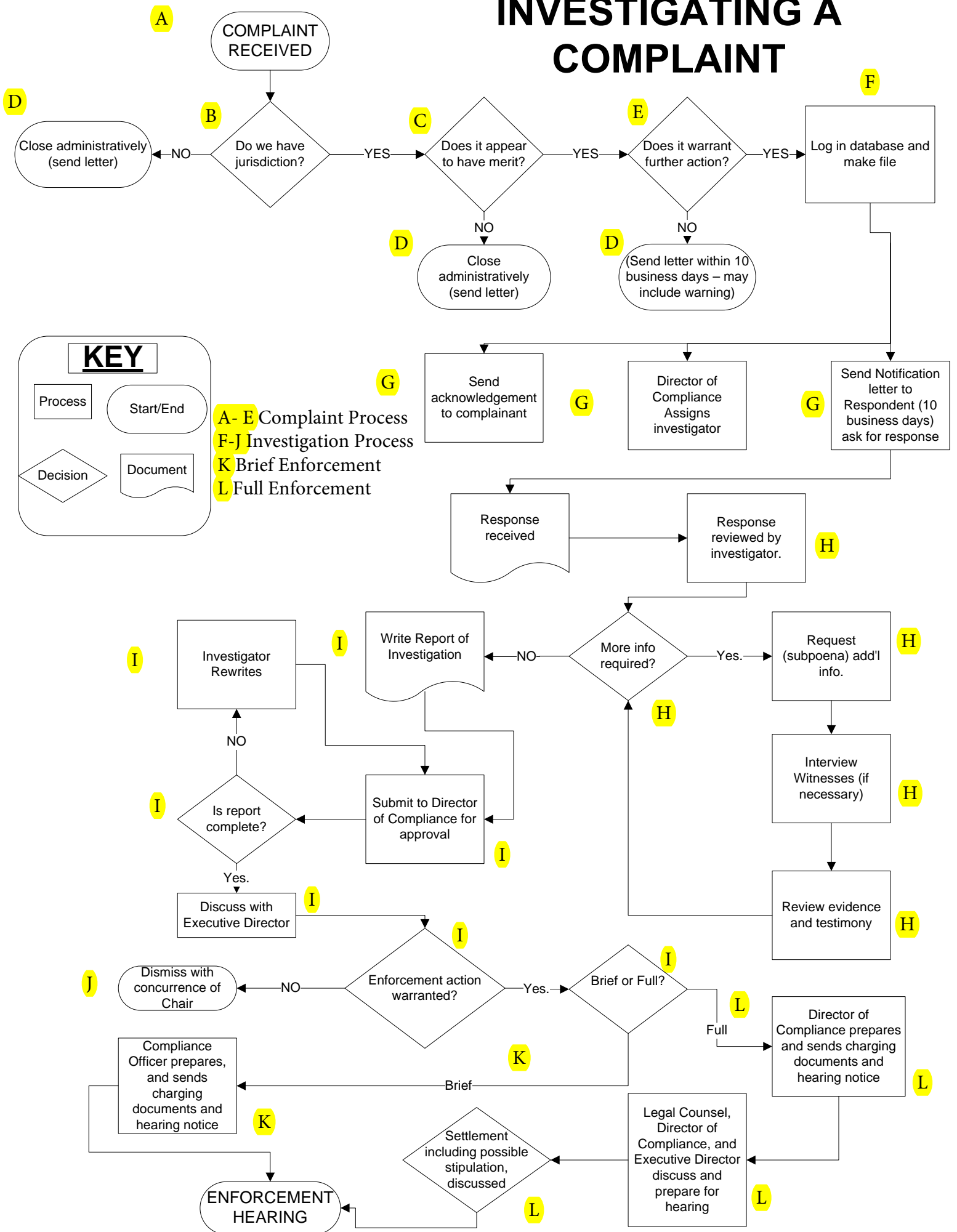
Attached to this memo you will find, 'Investigating a Complaint' the Compliance Division Complaint and Investigation Flow Chart. There is also a reference guide for complaint and investigative processes. The flow chart provides a simple key that identifies decision-making points, processes, documents, and start/end points for complaints and formal investigations. What is new is an alphabet-based code that I have added to identify the people and processes involved from start to finish – a road map. The reference guide is indexed to the alphabet on the chart and includes WAC 390-37-040 and WAC 390-37-060 which inform many aspects of this work.

Originally developed in February of 2011, the 'Investigating a Complaint' flowchart still provides a good overview of what the Compliance Division does when managing complaints and formal investigations. Executive Director Kiga asked me to present these materials in support of PDC Strategic Plan Item 4.2 'Create a Compliance and Enforcement Manual'.

Action and Next Steps

To prepare for this presentation I used the third section of the drafted Compliance Manual titled 'General Enforcement Processes'. This section lays out detailed instructions for who, what, and when regarding complaints and investigations. The attached reference manual represents a highly edited and concise version of that section. This presentation and material gathering is in support of the ongoing work for PDC Strategic Plan Item 4.2.

INVESTIGATING A COMPLAINT



A. COMPLAINT RECEIVED

WAC 390-37-040 Enforcement Procedures – Procedures for filing complaints with the Commission

(1) A complaint filed with the commission must be in writing. Complainants are encouraged to use the complaint form provided by the commission on its web site.

(2) A complaint must include:

(a) A statement of the nature of the alleged violation or violations, date, time and place of each occurrence and name of person or persons responsible;

(b) All available documentation and other evidence which the complainant is able to supply that supports the allegations made in the complaint. Information about where documents or evidence can be obtained should be included for any items that cannot be supplied with the complaint;

(c) The names and telephone numbers, e-mail addresses, and U.S. mail address, if known, of any witnesses or other persons who have knowledge of facts that support the complaint;

(d) The complainant's name, e-mail address, U.S. mail address, and telephone number; and

(e) The signature of the complainant certifying under penalty of perjury under the laws of the state of Washington that the information provided with the complaint is true and correct to the best of his or her knowledge and belief.

(3) The person or entity against whom a complaint is filed is known as the respondent.

Common allegations:

42.17A.205 - Statement of organization by political committees, failure to register C1PC

42.17A.235-Reporting of contributions and expenditures — Public inspection of accounts

42.17A.240-Contents of report.

42.17A.320-Identification of sponsor — Exemptions.

42.17A.555-Use of public office or agency facilities in campaigns

42.17A.600-Registration of lobbyists.

42.17A.710 - Contents of report (F1)

Intake procedures for PDC complaints:

Assign tracking number – Compliance Coordinator (CC)

- The T numbering process utilizes a TFY – 000 format:
- T = Tracking
- XX = fiscal year complaint was received
- 000 = order complaint was received during the fiscal year

Create paper and electronic Complaint Files (CC)

- Assign T-number based on the MASTER TRACKER Spreadsheet.
- Record the T number in the MASTER TRACKER Spreadsheet with the names of the Respondents and Complainants and the date received – with a short description of allegations.

B. Do we have jurisdiction?

Initial Review Form - CC or Director of Compliance (DOC)

During the complaint review, the CC or DOC evaluates the completeness of the complaint, including whether it articulates a clear allegation against an identified respondent, and the quality of the evidence provided.

Acknowledgement and Notification letters - CC with DOC signature

The complainant receives an emailed letter acknowledging receipt of the complaint. Respondents receive an emailed letter that informs them of the complaint and asks for a response within two weeks, with the complaint attached.

C. Does it Appear to Have Merit?(CC, Compliance Officer (CO), DOC and AD)

Triage Stage - CC, Compliance Officer (CO), DOC, Assistant Director (AD) and Executive Director

The Triage phase occurs between the reception of a complaint and its final disposition. During Triage the CC tracks the complaint with these criteria

- Awaiting Response – before a decision is made to move the complaint a response is pending.
- Complaints that need triage – these complaints, separated by fiscal year, are still waiting for the AD and DOC to make a decision about their final disposition.
- Complaint return letters to draft – these complaints, organized by fiscal year, have had a decision made about how they will be disposed of.
- Drafted complaint return letters to sign and mail – drafted complaint return letters for the AD to proof, and for the Executive Director to sign for disposition.
- Log in – complaints that require formal investigation. The AD, working with the DOC assigns these cases to a CO (section E/F).

D. Close Administratively

Returned – No Jurisdiction (DOC, AD and ED)

Staff returns complaints filed outside of PDC jurisdiction with instructions on where it needs to go.

Drafting complaint return letters – The CC, CO, or DOC under direction of the AD uses one of the templates from the list below. The AD approves drafted letters for dispositive signature from the Executive Director.

There are twelve templates for complaint return letters:

1. No Jurisdiction or Evidence Return Letter
2. Summary Complaint Return Letter
3. Summary Complaint Return Letter Cover
4. RCW 42.17A.320 Sponsor ID Return Cover Letter to Respondent with Warning
5. RCW 42.17A.320 Party Preference Return Cover Letter to Respondent with Warning

6. RCW 42.17A.335 Implied Incumbency Return Letter to Complainant
7. RCW 42.17A.335 Implied Incumbency Return Letter to Respondent
8. No Oath – Close complaint after two weeks
9. RCW 42.17A.335 Implied Incumbency Return Letter to complainant when functional equivalent test is met
10. RCW 42.17A.335 Implied Incumbency Return Letter to respondent when functional equivalent test is met
11. Return Ltr to Complainant When Filing Requirement Covered by Group Enforcement Process
12. Return Cover Ltr to Respondent When Filing Requirement Covered by Group Enforcement Process

E. Does it warrant Further Action? (DOC, AD and ED)

WAC 390-37-060 Enforcement procedure – Investigation of complaints – Initiation of hearing (adjudicative proceeding)

- (1) Upon receipt of a complaint the following will occur:
 - (a) The executive director will conduct an initial review of the complaint to determine if it is obviously unfounded or frivolous or appears on its face to have merit. An initial review is a preliminary investigation to determine if there is sufficient ground indicating that a material violation of chapter 42.17A RCW may have occurred and/or the respondent may not be in substantial compliance with the relevant statutes and rules.
 - (b) Whenever an initial review of a complaint indicates that a material violation of chapter 42.17A RCW may have occurred and/or the respondent may not be in substantial compliance with the relevant statutes and rules, the executive director may direct a formal investigation be conducted.
 - (c) If the executive director determines a formal investigation will require the expenditure of substantial resources, the executive director may request review and concurrence by the commission before proceeding.
- (2) The executive director shall initiate an adjudicative proceeding or provide a report to the commission whenever an investigation reveals facts that the executive director has reason to believe are a material violation of chapter 42.17A RCW and do not constitute substantial compliance.
- (3) The respondent shall be notified of the date of the adjudicative proceeding no later than ten calendar days before that date. The notice shall contain the information required by RCW 34.05.434. The complainant shall also be provided a copy of this notice.
- (4) It is the policy of the commission during the course of any investigation that all records generated or collected as a result of that investigation are exempt from public inspection and copying under RCW 42.56.240(1).
 - (a) The records are exempt until:
 - (i) The enforcement matter is scheduled for an adjudicative proceeding;
 - (ii) After receiving a report on an enforcement matter, the commission accepts the investigation as complete and moves the matter forward to an adjudicative proceeding, or dismisses the complaint, or refers the matter to law enforcement authorities under RCW 42.17A.105 or 42.17A.755(3);
 - (iii) The commission or chair concur in a dismissal by the executive director; or
 - (iv) The commission or executive director otherwise finally disposes of the complaint.
 - (b) Without waiving any exemptions from public disclosure that are otherwise available for pending investigations, the commission may make public:
 - (i) A copy of a complaint filed with or submitted to the commission, including any attachments; and

- (ii) Materials concerning an enforcement matter that are placed on the commission's web site with a commission meeting agenda.
- (c) If a request is made for any such record that implicates the privacy of an individual as defined in RCW 42.56.050, written notice of the records request may be provided to the individual in order that such individual may request a protective order from a court under RCW 42.56.540.
- (d) Certain documents provided to the commission shall be returned to candidates, campaigns, or political committees as required by RCW 42.17A.105 within seven calendar days of the commission's final action upon completion of an audit or field investigation.

Formal Investigations -- CO, DOC, AD, ED

A formal investigation begins when the Executive Director finds a material violation of PDC laws or rules may have occurred. Formal investigations generally start as complaints and through concurrence of the DOC and AD are forwarded to the Executive Director for permission to investigate.

F. Log in database and make file (CC)

Formal investigations receive case numbers (FY-000) issued by the DOC. The DOC instructs the CC to update the compliance database, create a paper blue file, and forward the investigation folder to the CO assigned to it. The DOC updates the paper notebook containing all investigative case numbers issued. The agency Communications Officer for places a copy of the original complaint on the PDC website.

Types of Investigations (Determined by DOC and AD)

- Routine investigations are those where the issues and allegations are simple, straightforward, and undisputed (for example, uncontested late reporting). They require little contact with witnesses and need minimal analysis. Attorneys are not typically involved.
- Moderately complex investigations involve multiple types of allegations or several different violations, and may involve more than one Respondent. They usually require interviews, and attorneys may be involved. Most investigations fall into this category.
- Complex investigations are those that involve complicated or novel fact patterns, numerous allegations, or complex sections of law, all of which require significant analysis; interviews with multiple Respondents and/or witnesses, or the review of voluminous records. They often involve lawyers and may require issuing subpoenas for witnesses and documents. Examples include investigations involving alleged concealment, significant failure to report campaign or lobbying activity; or complaints involving out-of-state political committees.

G. Send Notification letter to Respondent (10 business days) ask for response (DOC)

Send Acknowledgment to complainant (DOC)

Director of Compliance Assigns Investigator (DOC and AD)

Notification – DOC

Complainants and Respondents receive a notification letter informing them that the complaint has become a Formal Investigation.

Assignments - DOC, AD

- The AD assigns investigations to Compliance Officers (CO) through the DOC. Investigative priority is determined by the AD

Preparation – CO, DOC, AD

- Investigative Plan: the Compliance Officer (CO) prepares an investigative plan indicating:
 - (I) the specific section(s) of law alleged to have been violated,
 - (II) essential elements of information and evidence required to substantiate the allegation,
 - (III) a list of potential witnesses/persons to be interviewed,
 - (IV) any specialized or technical assistance to complete the investigation, and
 - (V) a projected timeline for completion of the report of investigation. This investigative plan, prepared by the CO, is turned into the DOC and is subject to their approval (informal) or revision as needed.
- Sources of information: CO will determine what sources of information are available for consultation before beginning the field operation portion of the investigation. (i.e., existing files, databases, etc.)
- Record keeping documentation: CO prepare record keeping documents to track and record investigative/audit efforts, results, and hours spent on the case.

Conduct of Investigations – CO, DOC, AD, ED

PDC investigations are impartial, and non- partisan. Compliance Officer (CO), DOC and AD, will conduct themselves with courtesy and professionalism at all times. The CO alerts the DOC who informs the AD of any conflicts that may arise during the course of an investigation.

H. Response Reviewed by Investigator (CO)

More Info Required (CO, DOC, AD and ED)

Request (subpoena) add'l info. (CO, DOC, AD and ED)

Interview Witnesses (if necessary) (CO, DOC, and AD)

Review Evidence and Testimony (CO, DOC, and AD)

General Procedures – CO, DOC, AD

CO may request the Executive Director to sign and issue administrative subpoenas to compel respondents and any individual with knowledge of the matter under investigation to provide documentary or testimonial evidence. The need for a subpoena will be discussed with the AD prior to requesting the Executive Director to issue the subpoena. Justification for the issuance of a subpoena should be established prior to requesting the subpoena. In the event of non-compliance with an administrative subpoena issued by the Public Disclosure Commission, the Attorney General may petition the appropriate Superior Court for enforcement of the subpoena.

During the course of an investigation, investigative staff will individually advise the DOC of the progress and status of their investigations at intervals and in a manner to be determined by the DOC in a case management policy. The DOC will inform the AD of the progress of the case. In the event that evidence of a criminal act is discovered, staff will separate that evidence from other case material, establish a chain of custody for the evidence, and notify the AD.

CO and/or DOC may find other violations than those listed in the original complaint. Any potential new Respondents receive notice providing them an opportunity to provide a written response. They may be issued a case number and have a separate formal investigation opened – also known as a staff generated complaint.

Interviews and Evidentiary Documents

CO records all interviews scheduled during an investigation. Sworn statements may only be taken in the presence of an individual qualified to administer oaths or affirmations.

I. Write Report of Investigation (CO)

Submit to Director of Compliance for approval (DOC)

Is the report complete? (DOC)

Investigator rewrites (CO)

Discuss with Executive Director (DOC, AD and ED)

Enforcement action warranted? (DOC, AD and ED)

Brief or Full? (DOC, AD, and ED)

Report of Investigation – CO, DOC, AD and ED

- The Report of Investigation (ROI) is the summary of what occurred during the investigation. ROI have five parts: background, allegations, findings, scope, and law. CO draft the first version of the report which is submitted to the DOC. Once the DOC approves the report it is passed to the AD for approval.
- CO do not sign but do date draft audit/investigative reports on the date submitted to the DOC

for review. The investigative case file will accompany the report. The AD has final approval authority for all reports through the DOC.

- All exhibits will be copied and the copies marked as exhibits. Original documents will remain in the case file.
- Investigative reports will contain all pertinent facts to the case to fulfill the requirements of the investigative plan, without drawing conclusions.
- Reports will consist of sections to reflect I) Background, II) Scope, III) Applicable Law, and IV) Findings. Reports will contain a narrative of the findings of the investigation with the appropriate references to the evidentiary exhibits attached to the report. This narrative will, in conjunction with the evidence gathered, substantiate or rebut the allegations made by the complainant, without comment or conclusion by the investigator. All allegations made in a complaint will be addressed in the ROI in sufficient detail to assist the AD in making disposition recommendations.
- CO will avoid including extraneous commenting from complainants, respondents, and witnesses in an ROI; unnecessary background information; and repetitive content. ROI should be written in clear, concise, and precise language.
- After the DOC has reviewed the ROI and directed the investigator to perform additional fieldwork or to edit the ROI for clarity and readability, the AD will review and make recommendations to the Executive Director for disposition.

J. Dismiss with concurrence of Chair

Dismissal of Investigations before Hearing – CO, DOC, AD, ED, Chair of Commission

CO and DOC working with the AD can determine if there is no basis to charge a violation. Staff notifies the Executive Director and the Chair of the Commission. The complaint is dismissed with concurrence from the chair.

K. Brief

Brief Enforcement Hearings (WAC 390-37-142) (Rule Change coming in 2015)

The PDC schedules brief enforcement hearings in cases where the penalty is less than \$500. The Chair of the Public Disclosure Commission, or another Commissioner acting in their stead, presides over the hearing. Respondents can avoid the hearing with a stipulation at which time they generally pay a penalty.

Compliance Officer prepares, and sends charging documents and hearing notice

Notice of Charges – CO and DOC

The CO writes the Notice of Charges for approval by the DOC. Once approved, the Notice is included in the mailing with the Hearing Notice. The Notice informs the respondent that charges are filed and enforcement action is imminent.

Hearing Notice – CO, DOC and AD

The Hearing Notice, written by the CO, approved by the DOC and AD, is the notice sent to respondents notifying them of a hearing. It must be mailed at least ten days before the hearing date. Sometimes the CC is asked to mail the notice.

Pre-Hearing Procedure - CO, DOC and AD

For Brief Enforcement Hearings, CO and DOC will prepare appropriate Brief Enforcement Hearing Memos and Hearing Notices for those complainants and respondents to be heard in Brief Enforcement Hearings.

- AGENDA – DOC, AD and Management Team
The Executive Management team sets the agenda for the monthly commission meeting.
- BOOKMARKING – CC
The CC bookmarks the case materials distributed to the Commissioners and the website before the monthly meeting. The CO, DOC and AD have their materials prepared for bookmarking and scanning one week before the meeting is scheduled.
- MAILING – CC
The CC works with the Executive Assistant for the mailing. Mailings are due one week before the Commission Meeting. The Mailing contains all of the materials the Commission reviews during the monthly hearing.
- BINDERS – CC
The CC keeps the Enforcement Binders up to date. These binders contain motions, penalty schedules and rules for the hearing. Depending on the nature of the enforcement process occurring during the hearing the CC, working with CO, the DOC, and the AD will update the binders as required.

L. Full

**Director of Compliance prepares and sends charging documents and hearing notice
Legal Counsel, Director of Compliance, and Executive Director discuss and prepare for hearing
Settlement including possible stipulation, discussed**

For an enforcement hearing before the full commission, all statements of charges will be prepared by the AD. CO and DOC will prepare hearing notices for the respondents and complainants.

Statement of Charges – AD and DOC

The AD will compose all Statement of Charges for Full Commission Hearings. Statements of Charges informs the respondent that charges are filed and enforcement action is imminent.

Hearing Notice – CO, DOC and AD

The Hearing Notice, written by the CO, approved by the DOC and AD, is the notice sent to respondents notifying them of a hearing. It must be mailed at least ten days before the hearing date. Sometimes the CC is asked to mail the notice.

Pre-Hearing Procedure, CO, DOC and AD

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