



STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112
Toll Free 1-877-601-2828 • E-mail: pdc@pdc.wa.gov • Website: www.pdc.wa.gov

Memorandum

To: Public Disclosure Commission

From: Kurt Young, Compliance Officer

Date: February 9, 2016

Subject: February 25, 2016 Enforcement Hearing:
Michael Cusick, PDC Case No. 16-015

Allegations:

PDC staff alleges that Michael Cusick, an incumbent Fire Commissioner for Okanogan Fire District No. 3, violated RCW 42.17A.700 by failing to file a Personal Financial Affairs Statement (F-1 report) due not later than April 15, 2015.

Background:

- Mr. Cusick was appointed Fire Commissioner at the end of calendar year 2007, and he filed his initial F-1 report on June 12, 2008.
- Mr. Cusick failed to file an F-1 report for calendar year 2013 and calendar year 2014.
- Mr. Cusick has three prior PDC violations: PDC Case No. 14-133 in which he was assessed a \$500 penalty; PDC Case No. 13-242 in which he was assessed a \$200 penalty; and PDC Case No. 08-136 in which he was assessed a \$50 penalty.
- Mr. Cusick is not eligible for a brief enforcement hearing under the provisions of WAC 390-37-160 because he has not filed the disclosure forms that were the subject of a prior violation in PDC Case No. 14-133, and this is his fourth occasion.

F-1 Reporting Requirements:

- As an incumbent Fire Commissioner, Mr. Cusick was required to file an F-1 report no later than April 15, 2015, disclosing personal financial information for calendar year 2014.
- Mr. Cusick was issued PDC Case No. 16-015 for a July 30, 2015, Brief Enforcement hearing as part of the 2015 Annual Officials Group Enforcement hearings for failing to file an F-1 report, but the hearing notice was not sent since he was not eligible for a Brief Hearing.

Past Enforcement History:

PDC Case No. 14-133

- On July 8, 2014, at a Brief Enforcement hearing, Mr. Cusick was found in violation of RCW 42.17A.700 as an incumbent Fire Commissioner for failing to file an F-1 report no later than April 15, 2014, disclosing personal financial information for calendar year 2013.
- Mr. Cusick was assessed a \$500 penalty.
- To date, Mr. Cusick has failed to pay the \$500 outstanding penalty, and he has failed to file the missing F-1 report for calendar year 2013.

PDC Case No. 13-242

- On August 1, 2013, at a Brief Enforcement hearing, Mr. Cusick was found in violation of RCW 42.17A.700 as a candidate for failing to file an F-1 report within two weeks of declaring his candidacy in 2013, or not later than May 31, 2013.
- Mr. Cusick was assessed a \$200 penalty. Mr. Creighton failed to file the missing F-1 report or pay the \$200 outstanding penalty, which was sent to AllianceOne for collections on May 16, 2014.

PDC Case No. 08-136

- On June 23, 2008, at a Brief Enforcement hearing, Mr. Cusick was found in violation of RCW 42.17A.240 as an incumbent Fire Commissioner for failing to file an F-1 report due no later than April 15, 2008, disclosing personal financial information for calendar year 2007.
- Mr. Cusick was assessed a \$50 penalty of which the entire penalty was suspended on the condition, he timely file F-1 reports for the next two years, which he complied with.

Staff Recommendation:

Staff recommends the Commission find that Michael Cusick violated 42.17A.700 by failing to file F-1 reports for calendar year 2014, and to:

1. Assess a civil penalty of \$750 for the missing F-1 report for calendar year 2014, which is payable within 30 days of the date of the Order.
2. Require Mr. Cusick to “cease and desist” from failing to file his required PDC reports in accordance with RCW 42.17A.755(4); and to file the missing F-1 reports for calendar years 2013 and 2014 within 30 days of the date of the Order.
3. Contact the Okanogan Fire District No. 3’s legal counsel to remind Mr. Cusick and other fire commissioners about the F-1 filing requirement.

Attachments:

- February 9, 2016 Enforcement Hearing notice for missing F-1 report.
- Order for Michael Cusick in PDC Case No. 14-133.
- WAC 390-37-160: F-1 penalty schedule.



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February 10, 2016

Michael Cusick
1A Pleasant Valley Road W
Okanogan WA 98840

Subject: F-1 Enforcement Hearing Notice PDC Case Number 16-015

Dear: Mr. Cusick:

PDC records indicate that you served as an elected or appointed official during calendar year 2014, which required officials in these positions to file an annual (F-1 report). The F-1 report discloses your financial activities for calendar year 2014, and was due to be filed no later than April 15, 2015.

PDC staff sent you an F-1 warning letter on May 8, 2015, with a blank F-1 report enclosed for you to complete and file the missing F-1 report. To date, the missing F-1 report has not been filed. Staff had planned on scheduling you for a Brief Enforcement Hearing in July of 2015. However, after reviewing your filings it was determined you were not eligible for a Brief Enforcement hearing under the provisions of WAC 390-37-160, since you have not filed the F-1 report that was the subject of a prior violation in PDC Case No. 14-133.

Therefore, in accordance with RCW 42.17A.110 and RCW 42.17A.755, an Enforcement Hearing before the Full Commission has been scheduled to determine if you violated RCW 42.17A.700 by failing to file the required F-1 report for calendar year 2014.

Enforcement Hearing Information

Date and time: **Thursday, February 25, 2016 at 1:00 p.m. (approximate time)**
Place: Evergreen Plaza Building, Room 206
711 Capitol Way, Olympia, WA, 98504-0908
Presiding Officer: Katrina Asay, Chair, Public Disclosure Commission

If you do not plan to be present at the hearing, you may submit evidence in your own behalf or in mitigation no later than noon on Tuesday, February 23, 2016 for distribution to Commission members. You may do so by writing to the Chair, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908, or by email at pdcc@pdcc.wa.gov.

Materials received after the Commission mailing on February 19, 2016, and before the hearing will be given to Commission members at the hearing.

Michael Cusick
Enforcement Hearing Notice (Missing F-1 report for calendar year 2014)
PDC Case No. 16-015
Page 2

If a hearing proceeds and you fail to attend or provide information on your own behalf, you may be in default and the Commission may assess appropriate penalties. The Commission has the authority to assess a penalty of up to \$10,000, or they can find apparent violations and refer the matter to the Attorney General for higher penalties.

You are not required by law to personally attend. However, the Public Disclosure Commission recommends that respondents personally appear whenever possible. PDC staff will present this matter to the Commission.

If you have questions regarding this matter, please contact PDC staff member Kurt Young at (360) 664-8854 or by e-mail at kurt.young@pdc.wa.gov.

Sincerely,


Evelyn Fielding Lopez
Executive Director

Enclosure:

- February 9, 2016 Enforcement Hearing Memorandum to Commissioners



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July 23, 2014

Michael Cusick
1A Pleasant Valley Road W
Okanogan WA 98840

Subject: PDC Case No. 14-133

Dear Mr. Cusick:

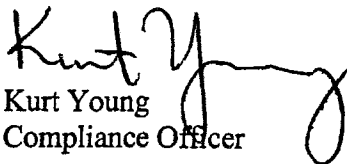
Enclosed is a copy of the Public Disclosure Commission's Order Imposing Fine that was entered in the above-referenced case.

The Presiding Officer assessed a civil penalty of \$500 against you in accordance with the penalty schedule set forth in WAC 390-37-160, which is payable within 30 days of the date of the order. The \$500 penalty was based on the fact you had two prior PDC violations, and you failed to file the missing F-1 report by the date of the hearing.

Please submit a payment for the \$500 penalty by August 22, 2014, and file missing F-1 report. Thank you for your attention to this matter.

If you have questions, please contact me at (360) 664-8854; toll free at (877) 601-2828 or by email at kurt.young@pdc.wa.gov.

Sincerely,


Kurt Young
Compliance Officer

Enclosure



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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

Michael Cusick
1A Pleasant Valley Road W
Okanogan WA 98840

In Re Compliance with RCW 42.17A

Michael Cusick

Respondent.

PDC Case No. 14-133

Findings of Fact,
Conclusions of Law, and
Order Imposing Fine

A brief enforcement hearing (brief adjudicative proceeding) was held July 8, 2014, in Room 206, Evergreen Plaza Building, 711 Capitol Way, Olympia, Washington to consider whether the Respondent violated RCW 42.17A.700 by failing to file a Personal Financial Affairs Statement (F-1 report) due April 15, 2014, disclosing financial information for calendar year 2013.

The hearing was held in accordance with Chapters 34.05 and 42.17A RCW and Chapter 390-37 WAC. A brief enforcement hearing notice was sent to Michael Cusick on June 9, 2014. Commission Member Amit Ranade was the Presiding Officer. The Commission staff was represented by Kurt Young, Compliance Officer. The Respondent did not participate at the hearing, and did not submit any written materials.

Having considered the evidence, the Presiding Officer finds as follows:

FINDINGS OF FACT

1. The Respondent was an incumbent Fire Commissioner for Okanogan Fire Protection District No. 3 in 2013.
2. As a Fire Commissioner, the Respondent was required to file an F-1 report no later than April 15, 2014.
3. The Respondent failed to file the missing F-1 report by the date of the hearing.
4. The Respondent has two prior violations in PDC Case Nos. 13-242 and 08-136.

CONCLUSIONS OF LAW

Based on the above facts, as a matter of law, the Presiding Officer concludes as follows:

1. This matter was duly and properly convened and all jurisdictional, substantive and procedural requirements have been satisfied.
2. The Respondent violated RCW 42.17A.700 by failing to file the F-1 report by April 15, 2014.

ORDER

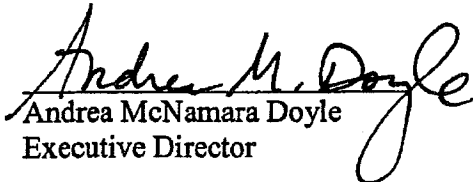
ON the basis of the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that the Respondent is assessed a civil penalty of \$500 in accordance with the penalty schedule set forth in WAC 390-37-160, which is payable within 30 days of the date of this order.

This is an **Initial Order** of the Public Disclosure Commission.

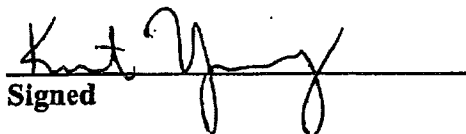
Entered this 23rd day of July, 2014.

Public Disclosure Commission


Andrea McNamara Doyle
Executive Director

Enclosure: Information about Appeal Rights

I, Kurt Young, certify that I mailed a copy of this order to the Respondent(s) at his/her/its respective address, postage pre-paid, on the date stated herein.


Signed

July 23, 2014
Date

**INFORMATION ABOUT APPEALS OF INITIAL ORDERS,
FURTHER APPEAL RIGHTS,
AND ENFORCEMENT OF FINAL ORDERS**

APPEALS

REVIEW OF INITIAL ORDER - BY THE COMMISSION

The presiding officer will issue an initial order following a brief enforcement hearing. Any party may request the Commission review an initial order. Parties seeking the review must:

- Make the request orally or in writing, stating the reason for review. *WAC 390-37-144.*
- Deliver the request so it is received at the Commission office within **TWENTY-ONE (21) BUSINESS DAYS** after the postmark date of the initial order.

A Respondent does not need to pay a penalty until after the Commission rules on the request.

If the Commission is unable to schedule a meeting to consider the request within twenty (20) business days, the initial order becomes a **final order** and the request will automatically be treated as a **request for reconsideration** of a final order (unless the party advises the Commission otherwise, such as by withdrawing the request). See more information on reconsideration below. If the request for review was an oral request, it must now be confirmed in writing. The matter will be scheduled before the full Commission as soon as practicable.

If the Commission does not receive a request for review within twenty-one (21) business days, the initial order will automatically become a **final order**. At that point, the Respondent is legally obligated to pay the penalty unless reconsideration has been sought or the matter has been timely appealed to Superior Court. *RCW 42.17A.755; RCW 34.05.470; RCW 34.05.570.*

RECONSIDERATION OF FINAL ORDER – BY THE COMMISSION

Any party may ask the Commission to **reconsider** a final order. Parties seeking reconsideration must:

- Make the request in writing;
- Include the specific grounds or reasons for the request; and
- Deliver the request to the PDC office so it is received within **TWENTY-ONE (21) BUSINESS DAYS** of the date that the Commission serves this order upon the party. *WAC 390-37-150.* (Note that the date of service by the Commission on a party is considered the

date of mailing by U.S. mail if the order is mailed, or the date received if the order is personally served. RCW 34.05.010(19). The Commission orders are generally mailed via U.S. mail.)

Within twenty (20) business days after the petition for reconsideration is filed, the Commission may either act on the petition or notify the parties in writing of the date by which it will act. If neither of these events happens within twenty business days, the Commission is deemed to have denied the petition for reconsideration. *WAC 390-37-150*.

A Respondent is not required to ask the Commission to reconsider a final order before seeking judicial review by a superior court. *RCW 34.05.470(5)*.

FURTHER APPEAL RIGHTS – SUPERIOR COURT

A final order issued by the Public Disclosure Commission is subject to judicial review under the Administrative Procedure Act (APA), chapter 34.05 RCW. *RCW 42.17A.755*. The procedures are provided in the APA at RCW 34.05.510 - .574.

ENFORCEMENT OF FINAL ORDERS

If enforcement of a final order is required, the Commission may seek to enforce a final order in superior court under RCW 42.17A.755 - .760, and recover legal costs and attorney's fees if a penalty remains unpaid and no petition for judicial review has been filed. This action will be taken without further order by the Commission.

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.]