



## PUBLIC DISCLOSURE COMMISSION

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To: Members, Washington State Public Disclosure Commission  
From: Andrea McNamara Doyle, Executive Director  
Lori Anderson, Communications & Training Officer  
Date: March 19, 2015  
Re: Rule Making – Preliminary Discussion – Procedures for Filing Complaints

### AGENDA ITEM

At its March 26, 2015 meeting, the Commission is scheduled to consider possible rule amendments that would require all complaints filed with the Commission to be signed by the complainant under oath, not just those that concern elected officials and candidates. The suggestion was offered by Commissioner Levinson at the January 2015 meeting that complainants alleging violations regarding ballot measures or other regulated persons or entities, such as lobbyists and non-candidate political committees, should be held to the same standard as complaints about candidates and elected officials.

### BACKGROUND

By rule, a complaint to the Commission is to be made in writing, and under oath if the complainant makes allegations concerning an elected official or candidate. WAC 390-37-040. This requirement originated in statute at the former RCW 42.17.310, which has subsequently been recodified to RCW 42.56.240 (within the Public Records Act).<sup>1</sup>

The Commission's enforcement procedure rules currently provide, in relevant part:

- (1) A complaint filed with the commission, relating to an elected official or a candidate for elective office, shall be in writing and signed by the complainant under oath.
- (2) A complaint filed with the commission, other than a complaint specified in subsection (1) of this section, shall be made in writing.

...

WAC 390-37-040.

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<sup>1</sup> RCW 42.56.240(2) provides: Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the [public disclosure] commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim, or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. **However, all complaints filed with the commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.**

The Commission has previously considered an amendment to this rule that would have required all complaints filed by the public with PDC to be signed by the complainant under oath. The change was discussed during a larger rulemaking effort undertaken in 2009 in which the Commission was considering a broad range of amendments to its complaint processing procedures.

As originally proposed in 2009, the amendment to WAC 390-37-040 would have required that all complaints filed with the commission by a member of the public must be submitted on the PDC complaint form and signed by the complainant under oath. The form was intended to standardize the complaint process and to foster better quality complaints. The ultimate goal was to reduce the time needed to process complaints and make the preliminary analysis more efficient.

In reviewing the history of that rulemaking, it appears the Commission considered public comments that resulted in the Commission rejecting the idea of *requiring* complaints to use the complaint form. The Commission also decided at its October 22, 2009 meeting to defer to an unspecified future meeting discussion of which complaints must be sworn under oath. See attached Minutes of October 22, 2009 Commission meeting related to the issue of requiring written complaints sworn under oath along with the written public comment. That discussion was not rescheduled.

#### SOURCES OF PDC COMPLAINTS

In addition to the most common source of PDC complaints, which are filed with the Commission by members of the public, the law and PDC rules contemplate that the Commission will also investigate and act on complaints received from a variety of other sources.

For example:

The law requires that “The commission shall ... upon complaint *or upon its own motion*, investigate and report apparent violations of this chapter to the appropriate law enforcement authorities...” RCW 42.17A.105(5).

In addition, “the attorney general and the prosecuting authorities of political subdivisions of this state may investigate *or cause to be investigated*” alleged violations of the PDC Chapter, which is normally accomplished by referring matters such as citizen action letters to the Commission for investigation and possible action.<sup>2</sup>

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<sup>2</sup> The law does not explicitly require citizen action letters submitted to the attorney general or a local prosecutor to be sworn under oath, although it does provide that the attorney general or prosecutor may require “any ... person reasonably believed to have information concerning the activities ... to give such information under oath...” See RCW 42.17A.765(2).

The Commission's rule concerning initiation of complaints provides:

- (1) A complaint alleging a violation of chapter 42.17A RCW may be brought to the attention of the commission staff by:
  - (a) A member of the public;
  - (b) The commission staff;
  - (c) A commission member, who shall then be disqualified from participating in the decision of an enforcement hearing that may arise from the complaint;
  - (d) Referral from the office of the attorney general or any other law enforcement agency;
  - (e) A state agency, local agency or member of a state or local agency.

WAC 390-37-020.

If the Commission decides to proceed with amending its rules to require additional complaints to be sworn under oath, it will be helpful to clarify whether the objective is to require oaths regardless of the *subject matter* of the complaint (*i.e.*, who the respondent is or what kind of violations are alleged), the *source* of the complaint (*i.e.*, who the complainant or referring entity is), or both.

If the Commission believes that all or more complaints should be sworn under oath as a prerequisite before PDC staff begins an investigation, it will be important to consider how such a requirement will affect the processing of citizen action letters referred by the attorney general or local prosecutors, as well as referrals the Commission periodically receives from other state and local agencies (such as the ethics boards). For example, would the Commission consider that those referred complaints were not "filed" with PDC and therefore not require the oath by either the original complainant or the referring agency; or would the Commission expect that an oath would be required from the original source to perfect the complaint before PDC staff could proceed with an investigation? If the latter, this would create delays or may pose other challenges that would impede timely completion of citizen action letter investigations.

### STAFF PROPOSAL

For discussion purposes, proposed draft language is attached. The proposals assume that the Commission's intent is to require oaths regardless of the subject matter and to require an oath only when the complaint is filed by a member of the public. The proposal assumes that information and referrals provided by commissioners and staff, the attorney general and other law enforcement agencies, and other public agencies are not "complaints filed with the Commission" and therefore need not be required to contain all the same information as complaints filed by the public.

Housekeeping amendments are included in the proposed draft language to better align WAC 390-37-040 and the complaint form to encourage more complete complaints when the form is not used. The complaint form was made available to the public on the

Commission's website in 2009, even though the Commission did not adopt the form as a rule and does not require complainants to use the form to submit complaints. The form explains, in greater detail than the rule, what information should be included in a complaint.

Finally, staff has included proposed amendments to WACs 390-37-020 and 390-37-040 to clarify that alleged violations may be brought to the attention of the Commission staff without the need to file a complaint. Staff frequently receives alerts alleging non-compliance that are typically resolved through filer assistance.

#### COMMISSION ACTION

To proceed with rule making to require complaints concerning ballot measures, lobbyists, and other non-candidates to be sworn under oath, the Commission must approve draft language. The Commission may approve the attached proposals or suggest alternatives. Once approved, language is filed with the Code Reviser and a public hearing is scheduled during a future Commission meeting to receive public comment before the Commission adopts any new or amended rules.

Attachments: October 22, 2009 Commission meeting minutes excerpt  
June 19, 2009 email from John White  
Complaint Form  
Draft language for proposed amendment to WAC 390-37-020  
Draft language for proposed amendment to WAC 390-37-040

Minutes

**Motion 10-027**

Moved by Commissioner Schellberg, seconded by Commissioner Seabrook:

**The Commission adopts the minutes of September 24, 2009 as written.**

The motion passed unanimously.

Rule Making

1. Public hearing and permanent adoption of WAC 390-37-040, Enforcement procedures – Procedure for filing complaints with the commission.

Nancy Krier reviewed the proposed amendment, which would require a signed oath for all complaints filed with the commission. Ms. Krier noted one additional possible clarification for the definition of “member of the public” in the rule in the staff amendment. The Commission discussed how to define “member of the public” as it relates to PDC staff and Commissioners, and possible changes to the staff amendment to identify those persons who are not considered members of the public.

**Motion 10-028**

Moved by Commissioner Schellberg, seconded by Commissioner Noland:

**The Commission will discuss which persons must swear an oath when filing a complaint with the Commission at a future meeting.**

Voting for: Commissioners Noland and Schellberg.

Voting against: Commissioner Clements.

Abstaining: Commissioner Seabrook.

2. Petition for Rulemaking to amend:
  - WAC 390-05-290 Definition – Political advertising,
  - WAC 390-18-010 Advertising, political advertising, electioneering communications, and independent expenditures, and
  - WAC 390-18-025 Advertising – Identification

Nancy Krier reviewed the Petition for Rulemaking submitted by Jim Lazar on October 12, 2009. Ms. Krier recommended that the Commission take action at a future meeting in order for staff to have sufficient time to review the petition.

Robert B. Shirley, attorney for Mr. Lazar, thanked the Commission for their consideration and confirmed that he and/or his client were able to appear at a future meeting to discuss the petition.

The Commission will hold further discussion on the

## Nancy Krier

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**From:** John White [white@lfa-law.com]  
**Sent:** Friday, June 19, 2009 3:44 PM  
**To:** Nancy Krier  
**Subject:** Revisions to complaint procedures

Dear Nancy:

I reviewed the packet for the upcoming PDC meeting, and have some concerns about the proposed change to complaint procedures. I am sympathetic to the concern that the complaint process was abused during the last election cycle, to the harm of both the Commission's mission and political participation. I am unsure that the proposed revisions are the right answer.

First, as drafted, the amended regulation seems to do away with the requirement of a written complaint that is generated by staff, and possibly by a county prosecutor. I do not believe that was the intent. To avoid ambiguity on that question, the first subsection should be broken up, require that all complaints be in writing, and then consider whether and to what extent a form should be used by the public.

Second, on the question of a form for complaints, I suggest that the form be "sufficient" but not necessary. Other forms of written complaint should be actionable, so long as they provide the necessary information. The form can assist in administering the statute by encouraging members of the public to provide details and supporting materials. However, requiring complaints to be submitted on a form as a prerequisite to action elevates form over substance. The "space available" means that complicated or interrelated fact patterns will require additional pages. I hope the Commission would, in practice, permit the use of "See attached for full recitation of the facts" rather than force complainants to fill in the space and then continue on additional sheets.

John J. White, Jr.  
[white@lfa-law.com](mailto:white@lfa-law.com)  
(425) 822-9281 ext. 321

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Tax Advice Notice: IRS Circular 230 requires us to advise you that, if this communication or any attachment contains any tax advice, the advice is not intended to be used, and cannot be used, for the purpose of avoiding federal tax penalties. A taxpayer may rely on professional advice to avoid federal tax penalties only if the advice is reflected in a comprehensive tax opinion that conforms to stringent requirements. Please contact us if you have any questions about Circular 230 or would like to discuss our preparation of an opinion that conforms to these IRS rules.



## WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION COMPLAINT FORM

(See instructions on the last page.)

### Description of Complaint

#### 1. RESPONDENT:

Identify who you are filing a complaint against and provide all contact information you have for them. Give names and titles, if any, for individuals, and the full name of any organization. Please note that the PDC does not enforce federal campaign finance laws or local ordinances.

*Example #1: Joe Public, Mayor of My Town,*

*123 Main Street, Your Town, State, Phone: 555-123-4567, Email: unknown*

*Example #2: The Political Action Group (instead of P.A.G.), 123 Main Street, Your Town, State,*

*Phone: 555-123-4567, Email: [pag@pag.org](mailto:pag@pag.org), Website: [www.PAGwashington.org](http://www.PAGwashington.org)*

#### 2. ALLEGED VIOLATIONS:

Explain how and when you believe the people/entities you are filing a complaint against violated RCW 42.17/RCW 42.17A or Title 390 WAC. Be as detailed as possible about dates, times, places and acts. If you can, cite which specific laws or rules you believe were violated. Attach additional pages if needed. (Note that the RCW 42.17 citation applies to conduct before 2012 and the RCW 42.17A citation applies to conduct on or after January 1, 2012.)

## **Evidence and Witnesses**

### **3. EVIDENCE:**

**List the documents or other evidence you have that support your complaint, if any, and attach copies to this form. If you do not have copies, provide any information you have about where you believe the documents or evidence can be found and how to obtain it.**

**Attach additional pages if needed.**

*Example: Emails between Joe public and Candidate X, attached OR*

*Joe Public has emails from Candidate X which describe an illegal campaign donation, and Joe Public's phone number is 555-123-4567.*

### **4. WITNESSES:**

**List the names and contact information, if known, of any witnesses or other persons who have knowledge of facts that support your complaint. Attach additional pages if needed.**

*Example: Jane Public was present when Candidate X spoke to me about the illegal contribution. Jane Public's address is 123 Main Street, Your Town, USA 12345, and her phone number is 555-123-4567.*



## Certification

### In signing this complaint:

- I have provided all information, documents and other evidence of which I am aware;
- If I become aware of additional information, documents or evidence related to my complaint, I will promptly provide it to the PDC; and,
- I am providing the PDC current information on how to contact me, and will promptly update that information if it changes.
- Unless otherwise noted, I agree that PDC may use email instead of U.S. mail for all written correspondence about this complaint.

**E-mail address:**

**Your name (print or type):**

**Street address:**

**City, state and zip code:**

**Telephone number (including area code):**

### Oath

### Required for complaints against elected officials or candidates for elective office:

I certify (or declare) under penalty of perjury under the laws of the State of Washington that this complaint is complete, true and correct to the best of my knowledge and belief.\*

**Your signature** \_\_\_\_\_

**Date signed** \_\_\_\_\_

**Place signed (city and county)**

\_\_\_\_\_  
**City**

\_\_\_\_\_  
**County**

## Attachments

Check here if you are attaching copies of documentary evidence or extra pages explaining your complaint.

*\*RCW 9A.72.040 says that "(1) A person is guilty of false swearing if he makes a false statement which he knows to be false, under an oath required or authorized by law. (2) False swearing is a misdemeanor."*

**Washington State Public Disclosure Commission**  
**Instructions for Filing a Formal Complaint**

➤ **When to use the formal complaint form:**

While this form is not required, its use is recommended when you want to file formal allegations of a violation of the Public Disclosure Commission (PDC) statutes or rules. You can find the PDC statutes and rules on the PDC website at [www.pdc.wa.gov](http://www.pdc.wa.gov).

If you have information or concerns about a possible violation but do not wish to file a complaint, please contact the PDC office directly.

➤ **How to submit your complaint form to the PDC:**

- Complete all sections. If you do not have some information, please write “unknown” instead of leaving a blank space.
- Attach copies of any evidence you have - we’ll contact you if we need originals.
- Sign the oath if your complaint is against an elected official or a candidate for elective office.
- Mail, fax, or email your complaint and all attachments to the PDC.

➤ **If you have more questions:**

If you have more questions about filing a complaint, see the “Frequently Asked Questions about Filing a Complaint” guide available on the PDC’s website at [www.pdc.wa.gov](http://www.pdc.wa.gov) under “Enforcement and Compliance.” You may also contact the PDC directly.

**PDC Contact Information**

**MAILING ADDRESS:** Washington State Public Disclosure Commission  
711 Capitol Way, Room 206  
PO Box 40908  
Olympia, WA 98504-0908

**EMAIL ADDRESS:** [pdc@pdc.wa.gov](mailto:pdc@pdc.wa.gov)

**PHONE:** 1-877-601-2828 (toll free)

**FAX:** (360) 753-1112

**HOURS:** Monday-Friday, 8:00 a.m. – 5:00 p.m., closed on state holidays.

WAC 390-37-020 ~~Enforcement procedures—((Initiation of complaint))~~

~~Alleging a Violation.~~ (1) ~~((A complaint alleging a))~~ Alleged violations of chapter 42.17A RCW may be brought to the attention of the commission staff by:

(a) A member of the public;

(b) The commission staff;

(c) A commission member, who shall then be disqualified from participating in the decision of an enforcement ~~((hearing))~~ matter that may arise from ~~((the))~~ a complaint regarding the alleged violation(s);

(d) Referral from the office of the attorney general or any other law enforcement agency; or

(e) A state agency, local agency or member of a state or local agency.

~~((2) The person or entity against whom a complaint is filed shall be known as the respondent.))~~

[Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-37-020, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 93-24-003, § 390-37-020, filed 11/18/93, effective 12/19/93. Statutory Authority: RCW 42.17.370(1). WSR 84-12-017 (Order 84-03), § 390-37-020, filed 5/25/84; Order 79, § 390-37-020, filed 6/25/76.]

**WAC 390-37-040 Enforcement procedures—Procedures for filing com-**

**plaints with the commission.** (1) A complaint filed with the commis-  
sion(~~(, relating to an elected official or a candidate for elective  
office, shall))~~) must be in writing(~~((and signed by the complainant un-  
der oath))~~). Complainants are encouraged to use the complaint form  
provided by the commission on its website.

(2) (~~(A complaint filed with the commission, other than a com-  
plaint specified in subsection (1) of this section, shall be made in  
writing.~~

~~(3))~~) A complaint (~~((filed under the provisions of either subsec-  
tion (1) or (2) of this section shall))~~) must include:

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

(b) All available documentation and other evidence which the com-  
plainant is able to supply (~~((to demonstrate a reason for believing  
that a violation of the sections of chapter 42.17A RCW that are en-  
forced by the commission has occurred; and))~~) that supports the allega-  
tions made in the complaint. Information about where documents or ev-

idence can be obtained should be included for any items that cannot be supplied with the complaint;

(c) The names and telephone numbers, email 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, email address, U.S. mail address, and telephone number(~~(, and other contact information for the complainant.)~~); 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 complete, 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.

[Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-37-040, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 03-22-065, § 390-37-040, filed 11/4/03, effective 12/5/03. Statutory Authority: RCW 42.17.370(1). WSR 84-12-017 (Order 84-03), § 390-37-040, filed 5/25/84; Order 79, § 390-37-040, filed 6/25/76.]