



## State of Washington PUBLIC DISCLOSURE COMMISSION

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February 20, 2014

TO: Commission Members  
FROM: Andrea McNamara Doyle  
RE: Strategic Plan Update on Compliance Reference Manual

### **Agenda Item**

At the February 27 meeting, the Commission is scheduled to receive an update regarding progress on Strategic Plan Item 4.2, Creating a Compliance and Enforcement Manual.

### **Background**

The Commission considered the value of a reference manual for the Compliance Division before and at its retreat in August and decided at the retreat to include it a priority action item for the 2013-15 Strategic Plan. The purpose of the manual has been identified as two-fold: to aid Commission staff in the consistent, efficient, and fair administration of its responsibilities under Chapter 42.17A RCW and Title 390 WAC; and to inform the public about the agency's current enforcement procedures.

As previously discussed, staff does not envision that the manual would in any way bind the Commission when considering enforcement matters, and it would not be intended to create any new rights, benefits, or defenses enforceable to any party or other person. It is not intended to replace or supersede existing laws, regulations, or Commission interpretations, or change any of their meanings. Rather, it will provide general information about the Commission's enforcement processes and resources available to staff and the public. It will also describe procedures and issues that may arise at various points during the enforcement process, and serve as a valuable source of written guidance to staff for ensuring consistent, efficient, and fair processing of compliance matters.

The process of reviewing the manual as it is being developed by staff will give the Commission an opportunity to become more familiar with important aspects of the complaint investigation process and, as needed, to provide guidance and direction regarding significant policy implications that may be raised as we begin to formalize various practices that have traditionally been approached on an informal or ad hoc basis.

Finally, the exercise of developing a compliance manual will give the Commission a chance to provide important direction on prioritizing limited agency resources in a manner that best promotes efficient and effective compliance efforts in alignment with the agency's mission and vision.

### Status Report

Over the past several weeks, staff has been collecting and reviewing examples of other similar reference manuals or comparable guidance documents from different jurisdictions, creating an outline of what should be included in the PDC's manual, and beginning to discuss the types of policy implications that may be appropriate to bring to the Commission for guidance.

Attached to this memorandum is a draft of the high level outline for the manual, as well as a preliminary list of some policy questions we believe the Commission may want to weigh in on as we move forward to formalize past practices. Many of these policy questions will likely require additional research and, in some cases, legal advice from our counsel.

At the Commission meeting, we will be walking through the outline to see whether there are other topics, either at a high level or at a more detailed level, that you would like to see addressed in the manual. We will also ask for your input regarding the preliminary list of policy questions, to confirm whether these are the types of questions you believe it is appropriate for the Commission to address and, if so, the process by which you would like to address them. We will invite you to raise additional enforcement-related policy issues that you believe should be addressed in the manual, and prioritize the issues raised to date. Finally, time permitting, all compliance staff will be available during this part of the meeting to answer your questions about current or past practices and assist you in answering any of the policy issues you are ready to resolve.

Attachments: Compliance manual outline

Preliminary list of policy questions raised by draft compliance manual outline

# Compliance Division Process and Procedures Manual (Draft 1.4)#

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## PDC Compliance Manual Table of Contents:

- I. Introduction
  - A. Compliance Philosophy/Approach to Enforcement
  - B. Division Staff Roles
    - 1. Director
    - 2. Investigator
    - 3. Coordinator
- II. Commission Jurisdiction
- III. General Enforcement Processes
  - A. Complaints
    - 1. Types of Allegations
    - 2. Sources of Allegations
      - a. Public
      - b. Referral of 45-day letter from AGO or County Prosecutor
      - c. Agency Generated Complaint
      - d. Group Enforcement
    - 3. Initial Review
      - a. Intake procedures
        - i. Assign tracking number and enter data
        - ii. Statute of Limitations considerations
        - iii. Complete Initial Review Form
        - iv. Acknowledgement and notification
      - b. Informal preliminary investigations
    - 4. Disposition Options for Complaints
      - a. Return with no action
      - b. Return with minor action (corrective action or warning)
      - c. Log-In for formal investigation
      - d. Other e.g. confer with commission re: significant resources considerations
    - 5. Decision Points
      - a. Flow Chart
  - B. Formal Investigations
    - 1. Types of investigations
      - a. 45 Day Letter
      - b. Routine
      - c. Moderately Complex
      - d. Complex
    - 2. Notification
    - 3. Investigative Plan
      - a. Development of the investigative plan

# Compliance Division Process and Procedures Manual (Draft 1.4)#

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- b. Documentary evidence and records
            - i. Data gathering (including subpoena)
            - ii. Interviews
            - iii. Review of Records
        - 4. Report of Investigation
  - C. Disposition of Cases
    - 1. Compliance staff recommendation
    - 2. Executive and legal review/ enforcement decision
    - 3. Dismissal
      - a. Concurrence of chair
    - 4. Brief Enforcement Hearing
      - a. Notice of Charges
      - b. Hearing Notice
      - c. Pre-hearing procedures
      - d. Hearing procedures
    - 5. Full Commission Enforcement Hearing
      - a. Notice of Charges
      - b. Hearing Notice
      - c. Pre-hearing procedures and conference
      - d. Negotiated Stipulations
        - i. Facts
        - ii. Violations
        - iii. Penalty guidance (evaluating penalty factors and comparables)
        - iv. Terms & Conditions
      - e. Hearing procedures
    - 6. Report to Commission for Referral to AGO
      - a. Notice
      - b. Presentation of report
      - c. Final Order
    - 7. Other
    - 8. Appeals
      - a. Review (BEH)
      - b. Reconsideration (Full)
- IV. Group Enforcement
  - A. Type of Group Enforcement
    - 1. L2
    - 2. L3
    - 3. Candidate C1/F1
    - 4. Annual F1
  - B. Warning Notice
  - C. Hearing Notice

## **Compliance Division Process and Procedures Manual (Draft 1.4)#**

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- D. Stipulation
- E. Group Enforcement Hearing
- F. Final Order
- G. Appeals
- V. Audits
- VI. Other Processes
  - A. Data management
  - B. Collections
  - C. Records Retention and management
    - a. digital
    - b. physical
  - D. Processing Public Records for compliance/enforcement records
    - a. Requests
    - b. Telephone notes
    - c. Guidance
    - d. Investigative files
  - E. Reporting on status and outcomes
    - a. Commission
    - b. Public

## **DRAFT (February 2014)**

### Preliminary list of policy questions for possible Commission consideration to include in Compliance Reference Manual

#### **Sufficiency of Original Complaint**

Is there a minimum *quantity* or *quality* of evidence the Commission believes complainants should be expected to provide with a complaint in order for staff to make an initial determination that a complaint “appears to have merit” and, therefore, begin an investigation and require potential Respondent(s) or other potential third parties to respond (such as by providing documents or time-intensive, detailed answers to “disprove” vague, generalized, or unsubstantiated allegations)?

Examples:

- Allegations that an entity is an unregistered political committee based on circumstantial evidence of an unspecified level of political activity, without regard for the possible source of funds or the extent of the alleged expenditures;
- Allegations of illegal earmarking of contributions based on circumstantial evidence of “suspicious” timing of contributions and expenditures;
- Allegations of improper use of public facilities by a local government based on generalized evidence of “activity” related to a ballot measure sponsored or supported by the local government.

#### **Identifying the Right Respondent(s)**

For complaints against political committees, when should staff consider naming *individuals* as Respondents, in addition to naming the *committee as an entity*? More specifically, when is it appropriate to name:

- Candidates in their individual capacity?
- Committee treasurers, when there is reason to believe they were responsible for the violation?
- Other Committee officers, when there is reason to believe they were actively involved in the violation?

#### **Internal Staff Recommendations Regarding Disposition of Cases**

Are there circumstances under which the investigator, or Director of Compliance, should prepare a written recommendation about possible disposition of a case (dismissal versus charges, recommended penalties based on analysis of penalty factors, etc.) separate from the report of investigation?

### **Complaint Return Letters**

When the PDC returns a complaint to a complainant after completing a “preliminary review” (which typically involves some limited research, interviews, and/or document review), how much detail should be provided to explain why no formal investigation will be conducted and/or why no enforcement action will be taken?

### **Brief Enforcement Cases**

Because the facts comprising the violations are typically not in dispute at brief enforcement cases, and the hearings typically focus primarily on mitigating circumstances, would it be appropriate for staff to seek stipulated penalties to avoid the need for some brief hearings?

### **Stipulated “Violations”**

When, if ever, is it appropriate for staff to agree to a stipulation involving an “Alford” plea, where the Respondent refuses to admit to the violation but agrees to pay a penalty?

### **Terms & Conditions of Penalties in Stipulations or Final Orders**

Are there standard terms and conditions the Commission believes staff should always include and/or at least consider when negotiating stipulated penalties or in preparing final orders after Commission rulings? Example:

- Default period of time in which a penalty must be paid (absent negotiated payment plan).
- Length of time penalties should be suspended.
- Whether failure to meet any condition of suspension should automatically trigger reinstatement of suspended penalty amount.

### **45-Day Letter Investigations**

In the event staff cannot complete an investigation into a citizen action complaint before the expiration of the 45 days (or the additional 10-day notice period), does the Commission want to receive a report based on the preliminary or unfinished investigation before the time period expires?