

Chapter 390-37 WAC
ENFORCEMENT ((HEARING (ADJUDICATIVE PROCEEDING))) RULES

AMENDATORY SECTION (Amending WSR 12-18-015, filed 8/24/12, effective 9/24/12)

WAC 390-37-001 Enforcement cases—Jurisdiction. The public disclosure commission (PDC) enforces chapter 42.17A RCW concerning campaign financing, lobbyist reporting, reporting of public officials' financial affairs, reporting by public treasurers, political advertising, campaign contribution limitations and the other provisions in chapter 42.17A RCW. ~~(The ((commission))~~ PDC does not enforce the Public Records Act under chapter 42.56 RCW. RCW 42.56.550 provides for direct review by the superior courts for persons seeking to enforce chapter 42.56 RCW.)

NEW SECTION

WAC 390-37-005 Complaint review and categorization. (1) PDC staff, upon receiving or initiating a complaint, will promptly conduct an initial review and preliminarily assign matters to certain categories.

(2) Upon initial review, a matter may be preliminarily categorized as:

- (a) Unfounded or frivolous, pursuant to WAC 390-37-060;
- (b) A remedial violation, pursuant to RCW 42.17A.005;
- (c) Appropriate for resolution as a technical correction, pursuant to RCW 42.17A.005;
- (d) A minor violation, appropriate for alternative resolution alternatives, pursuant to WAC 390-37-061;
- (e) Appropriate for investigation as to whether or not there has been a material actual violation eligible for resolution pursuant to RCW 42.17A.005(2);
- (f) Appropriate for referral to the attorney general, pursuant to WAC 390-37-042; or
- (g) Other status as authorized and appropriate under chapter 42.17A RCW or Title 390 WAC.

(3) Each enforcement matter will be posted by PDC staff on the PDC's public case-tracking database, where its status will be updated from time to time as appropriate until the matter is closed.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

WAC 390-37-010 Enforcement procedures—General. This chapter provides the procedures for the PDC's enforcement of compliance with

chapter 42.17A RCW, including categorization of enforcement matters, complaint processes, alternative resolutions, investigations, and adjudicative proceedings (enforcement hearings) in compliance cases under the commission's jurisdiction. The procedures are also governed by RCW 42.17A.755, and the adjudicative proceedings provisions of chapter 34.05 RCW. Unless they differ or are otherwise specifically addressed in this chapter, the procedures, are supplemented by the model rules of procedure in chapter 10-08 WAC. In lieu of holding an adjudicative proceeding or issuing an order as a result of such a proceeding, the commission may refer the matter to the attorney general or other law enforcement agency at any time, pursuant to RCW 42.17A.105((+5)) and 42.17A.755.

In addition, the procedures for ~~((requesting))~~ a person required to file a report under this chapter to request a hearing on a petition to modify or suspend reporting requirements are provided in RCW 42.17A.120 and chapters 390-24 and 390-28 WAC.

The policy of the ~~((commission))~~ PDC is to facilitate the resolution of compliance matters in a fair and expeditious manner. The ~~((commission))~~ PDC encourages the parties to consider corrections, alternative resolution ((or)), partial resolution, statements of understanding, settlement and stipulation procedures as set forth in WAC 390-37-040, 390-37-060, 390-37-062, 390-37-075, ((or)) 390-37-090, ((when)) or 390-37-142 whenever appropriate. Informal settlements are encouraged by RCW 34.05.060.

AMENDATORY SECTION (Amending WSR 15-12-079, filed 5/29/15, effective 6/29/15)

WAC 390-37-020 Enforcement procedures—~~((Alleging a violation))~~

Who may allege a violation with the PDC. Alleged violations of chapter 42.17A RCW may be brought to the attention of the ~~((commission))~~ PDC staff by:

- (1) A member of the public;
- (2) The ~~((commission))~~ PDC staff;
- (3) A commission member, who shall ~~((then be disqualified))~~ thereafter, in their discretion, determine whether disqualification from participating in the ((decision)) adjudication of an enforcement matter that may arise from a complaint regarding the alleged violation(s) is appropriate;
- (4) Referral from the office of the attorney general or any other law enforcement agency; or
- (5) A state agency, local agency or member of a state or local agency.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

WAC 390-37-030 Enforcement procedures—~~((Citizen complaints filed with the commission))~~ Standing and notice for complainants. (1) When a ~~((citizen))~~ complaint ~~((has been filed with the agency))~~ is

filed with the PDC other than by PDC staff pursuant to WAC 390-37-040, neither the complainant nor any other person shall have special standing to participate or intervene in ((the)) any investigation or consideration of the complaint by the commission or its staff. However, the staff shall give notice to the complainant of any ((open)) commission hearings on the matter and the complainant may be called as a witness in any enforcement hearing or investigative proceeding. The commission's presiding officer has the discretion to allow comment by a person other than the respondent during the consideration of a complaint by the commission. Any person who wishes to comment should notify staff at least three business days before the proceeding.

(2) The complainant or any other person may submit documentary evidence and/or written factual or legal statements to the staff at any time up to and including the fifth calendar day before the date of any enforcement hearing or proceeding, but complainants are encouraged to provide as much information as possible at the time of filing a complaint to help ensure the complaint review and investigation processes are as thorough as possible. Complainants and others are encouraged to submit evidence electronically wherever feasible.

~~((3) A person not satisfied with the dismissal of a complaint by the commission or its executive director may pursue an appropriate remedy under RCW 42.17A.765(4).))~~

AMENDATORY SECTION (Amending WSR 15-12-079, filed 5/29/15, effective 6/29/15)

WAC 390-37-040 Enforcement procedures—Procedures for filing complaints with the ((commission)) PDC. (1) A complaint filed with the ((commission)) PDC must be ((in)) by electronic writing. Complainants ((are encouraged to)) must use the ((complaint form)) form(s) provided by the ((commission)) PDC on its web site. The executive director may waive this requirement and allow for the use of another written format on the basis of hardship.

(2) A complaint must include:

(a) A statement of the nature of the alleged violation or violations, referencing chapter 42.17A RCW and/or Title 390 WAC (if known), date, time and place of each occurrence and name of person or persons believed to be responsible, and a description of the impact of the alleged violation on the public;

(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 and any relevant contact information 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)) related to the complaint;

(d) The complainant's name, email address which will be the PDC's official method of communication, 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~~) their knowledge and belief; and

(f) Other pertinent information, as required by the PDC.

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

NEW SECTION

WAC 390-37-042 Enforcement procedures—Process and criteria for referring enforcement matters to the attorney general. (1) When a complaint is filed or initiated by the PDC, the PDC may refer the matter at any time to the attorney general in accordance with RCW 42.17A.755. The determination to refer a matter to the attorney general will be made by either:

(a) A majority vote of the commission at a regular or special commission meeting; or

(b) By the executive director with the documented concurrence by electronic writing of either the chair or vice chair of the commission.

Any referral to the attorney general will be made in writing and may be made by electronic transmission.

(2) Enforcement matters potentially appropriate for referral may be brought to the executive director's attention by members of the commission, by PDC staff, by another party, or by the attorney general.

(3) Where the attorney general has requested referral of a matter and addressed the relevant criteria under RCW 42.17A.755, the executive director shall respond to the request within two business days. Both the request and the response shall be in writing and may be by electronic transmission.

(4) The executive director shall report at each regular commission meeting all referrals made by the executive director to the attorney general and all requests for referral by the attorney general since the prior commission meeting.

AMENDATORY SECTION (Amending WSR 17-03-004, filed 1/4/17, effective 2/4/17)

WAC 390-37-050 Enforcement procedures—Respondent's notice of complaint. (1) Within ten days of receipt by the ((commission)) PDC of a complaint which on its face appears to have merit, the ((commission)) PDC staff shall notify the respondent that a complaint has been filed((-)), along with an explanation of possible next steps, including the categorization process under WAC 390-37-005. Sending the complaint to the respondent's email address of record as provided to the PDC shall constitute sufficient notice.

(2) The notice shall set forth the nature of the complaint and ((its origin (citizen complaint, commission or other) and the statutory provision alleged to have been violated. If an alternative response to the alleged violation has been issued as provided by this chapter,

~~the notice shall also describe that response, including any conditions the respondent is required to meet)) the statutory and/or rule provision(s) alleged to have been violated.~~

(3) Respondents who wish to respond must file their response electronically within fourteen days of being notified by PDC staff, addressing the alleged noncompliance in the complaint. The response may address the respondent's view of which category or categories appropriately address the alleged noncompliance pursuant to WAC 390-37-005 (remedial, technical corrections, etc.). The PDC staff may provide for a shorter response period for complaints received within twenty-one days of an election.

(4) If an alternative response to the alleged violation has been issued as provided by this chapter, the notice shall also describe that response, including any conditions the respondent is required to meet.

AMENDATORY SECTION (Amending WSR 17-03-004, filed 1/4/17, effective 2/4/17)

WAC 390-37-060 Enforcement procedures—Alternative responses to noncompliance—Investigation of complaints—Initiation of adjudicative proceeding. ~~(1) Upon receipt of a complaint, the ((executive director)) PDC staff will conduct an initial review of the complaint ((to determine what action will be taken. An initial review is a preliminary investigation to determine whether the allegations are limited to minor or technical violations of chapter 42.17A or if there is sufficient ground indicating that a material violation of chapter 42.17A RCW may have occurred so as to warrant a formal investigation)) pursuant to WAC 390-37-005.~~

~~(a) If the executive director determines that any complaint is obviously unfounded or frivolous, or outside of the PDC's jurisdiction, the executive director will inform the complainant and, as appropriate, the respondent why no further ((investigation)) action is warranted.~~

~~(b) The executive director may resolve a matter as a technical correction pursuant to RCW 42.17A.755. PDC staff will notify the respondent of the need to make a correction and the deadline by which that correction must be made. The deadline will be no less than five days and no more than thirty days from the date of the notification. The failure to make the requested correction may result in the initiation of an investigation or other enforcement action.~~

~~(c) The executive director may resolve a matter as a remedial violation pursuant to RCW 42.17A.755.~~

~~(d) The executive director may resolve any complaint that alleges minor ((or technical)) violations of chapter 42.17A by issuing a formal written warning. If the resolution is conditioned upon the respondent reaching or maintaining compliance, specific expectations and any deadlines ((should)) will be clearly explained in the written warning. A respondent's failure to meet conditions may result in a complaint being reopened.~~

~~((e)) (e) The executive director may use the complaint publication process set out in WAC 390-32-030 to resolve any complaint that alleges minor or technical violations of chapter 42.17A RCW.~~

~~((d))~~ (f) The executive director ~~((shall))~~ may initiate ~~((a formal))~~ an investigation whenever an initial review of a complaint indicates that a material violation ~~((of chapter 42.17A RCW))~~ may have occurred.

(g) The executive director shall report at each regular commission meeting a summary covering the period since the previous commission meeting of all complaints initiated or received; how they were categorized; the nature of the allegations; conformance to required timelines; and actions taken and resolutions achieved pursuant to the alternatives provided for under chapter 42.17A RCW, such as dismissals, requests for technical correction, warning letters, complaint publication, statements of understanding, initiations of investigations, status reviews, stipulations, referrals to the attorney general's office, brief adjudicative proceedings, or commission hearings.

(2) If the executive director determines ~~((a formal))~~ an investigation will require the expenditure of substantial resources, the executive director may request review and concurrence by the commission before proceeding.

~~(3) ((The executive director shall initiate an adjudicative proceeding or provide a report to the commission whenever a formal 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.~~

~~(4))~~ If the executive director determines an investigation is warranted, an initial hearing (also referred to as a "case status review") shall be held pursuant to WAC 390-37-071 within ninety days.

(4) Following the initial hearing (case status review), and further investigation if needed, the executive director may initiate an adjudicative proceeding whenever the facts support that an actual violation has occurred and the matter is not appropriate for a dismissal or an alternative resolution.

(5) The respondent and complainant shall be notified of the date of the adjudicative proceeding or a report on an enforcement matter resulting from a complaint no later than ten calendar days before that date. The notice shall contain the information required by RCW 34.05.434, the staff investigative report, and any charges to be adjudicated. The notice, whenever possible, will be delivered electronically.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

WAC 390-37-061 Enforcement procedures—Alternative responses to noncompliance—Goals and objectives—Factors to be considered. (1) In considering appropriate responses to ~~((noncompliance with chapter 42.17A RCW or Title 390 WAC, the commission))~~ actual violations, as that term is used in the act, the PDC staff considers whether ~~((a formal))~~ an investigation or adjudicative proceeding constitutes an efficient and effective use of public funds; or whether an alternative response better meets the ~~((commission's))~~ PDC's mission and public expectations by allowing the expedited resolution of minor ~~((and technical alleged))~~ violations, and the focusing of ~~((staff and commission))~~

resources on ~~((major alleged))~~ more significant violations of chapter 42.17A RCW and Title 390 WAC.

(2) A minor violation is an actual violation that occurs:

~~((a) When required information is not timely disclosed, ((however)) but the public is not deprived of critical information (A technical violation occurs when)); or~~

~~((b) When incomplete information is disclosed, but a good faith effort to comply with disclosure is made, ((but incomplete information is disclosed)) and the public is not deprived of critical information.~~

~~((2)) (c) When any other violation of chapter 42.17A RCW has occurred that does not materially affect the public interest.~~

(3) In authorizing an alternative response to alleged noncompliance, the executive director may consider the nature of the alleged violation and any relevant circumstances including, but not limited to, the factors described in subsection ~~((3))~~ (4) of this section: Provided, that, if after weighing the relevant circumstances and factors, the executive director determines that there is evidence that so warrants, the allegations shall be addressed through ~~((a formal))~~ an investigation as provided by WAC 390-37-060.

~~((3))~~ (4) The factors the executive director may consider in permitting an alternative response to noncompliance, ~~((a formal))~~ an investigation, or an adjudicative proceeding include, but are not limited to:

An alternative response to noncompliance may be appropriate if ...	((A formal)) An investigation and possible adjudicative hearing may be appropriate if ...
It appears that noncompliance resulted from a good-faith error, omission, or misunderstanding.	It appears that the noncompliance may have resulted from a knowing or intentional effort to conceal, deceive or mislead, or violate the law or rule, or from collusive behavior.
The respondent is a first-time filer.	The respondent has experience in complying with the applicable requirements.
The respondent's compliance history indicates the noncompliance was isolated or limited in nature, and not indicative of systematic or ongoing problems.	The noncompliance is part of a pattern of violations by the respondent, or in the case of a political committee or other entity, part of a pattern of violations by the respondent's officers, staff, principal decision makers, consultants, or sponsoring organization.
The impact of the noncompliance on the public was minimal.	The noncompliance deprived the public of timely or accurate information during a time-sensitive period in a campaign, legislative session, etc., or otherwise had a significant or material impact on the public.
The respondent's organization or campaign was relatively unsophisticated or small.	The respondent or the respondent's organization or campaign demonstrated a relatively high level of sophistication, or was well financed and staffed.
The total expenditures by the respondent in the campaign or statement period were relatively modest.	The campaign or statement period involved significant expenditures by the respondent.
The amount of late-reported activity, or the duration of the untimely disclosure, was small in proportion to the amount of activity that was timely reported by the respondent.	The late or unreported activity was significant in amount or duration under the circumstances, including in proportion to the total amount of expenditures by the respondent in the campaign or statement period.
There is no evidence that any person, including an entity or organization, benefited politically or economically from the noncompliance.	It appears the respondent or anyone else benefited politically or economically from the noncompliance.
Personal emergency or illness of the respondent or member of his or her immediate family contributed to the noncompliance.	There are no circumstances that appear to mitigate or appropriately explain the late reporting or other noncompliance.
Other emergencies such as fire, flood, or utility failure prevented compliance.	There are no circumstances that appear to mitigate or appropriately explain the late reporting or other noncompliance.

An alternative response to noncompliance may be appropriate if ...	((A formal)) An investigation and possible adjudicative hearing may be appropriate if ...
((Commission)) PDC staff or equipment error, including technical problems at the agency prevented or delayed electronic filing.	((Commission)) PDC staff or equipment error did not appear to contribute to the noncompliance.
The noncompliance resulted from the respondent's demonstrated good-faith uncertainty concerning staff guidance or instructions, a lack of clarity in the rule or statute, or uncertainty concerning the valid application of the commission's rules.	It appears the respondent understood the application of staff's guidance or instructions, and did not dispute the valid application of the commission's rules.
The respondent quickly took corrective action or initiated other remedial measures prior to any complaint, or when noncompliance was brought to respondent's attention (e.g., filing missing reports, amending incomplete or inaccurate reports, returning prohibited or over limit contributions).	The respondent appeared negligent or unwilling to address the noncompliance.
The respondent made a good-faith effort to comply, including by consulting with ((commission)) PDC staff following a complaint and cooperating during any preliminary investigation, or demonstrated a wish to acknowledge and take responsibility for the alleged violation.	The respondent failed to provide a timely or adequate response to the complaint, or was otherwise uncooperative.
The alleged violation was or is being addressed under an analogous local ordinance, regulation, or policy.	The commission has primary jurisdiction over the alleged violation.
The alleged violation presents a new question or issue for the commission's interpretation.	The alleged violation does not present a case of first impression.
Other factors relevant to a particular case	

NEW SECTION

WAC 390-37-062 Enforcement procedures—Alternative responses—Cases resolvable by stipulation prior to completion of investigation—Penalty schedule.

(1) The purpose of WAC 390-37-062 is to set forth a schedule of violations and penalties that may be agreed to by a respondent pursuant to a stipulation prior to an investigation, as authorized by RCW 42.17A.755. That schedule appears in the table below.

(2) A violation not set forth in the schedule may be resolved pursuant to a stipulation, provided that the proposed penalty amount is within the dollar ranges listed in the schedule.

(3) "Occasion" as used in the schedule means an "actual violation," as defined in RCW 42.17A.005, found by the commission.

(4) Only actual violations within the last five years will be considered for determining whether the violation under consideration shall be deemed a second or third occasion.

(5) Any proposed stipulation shall be in writing, must include a brief recitation of the facts, violations, and penalty, and be signed by each party to the stipulation or their representative and provided by 4:00 p.m. three business days preceding the commission meeting. The executive director shall sign for PDC staff.

(6) The commission has the option of accepting, modifying or rejecting the proposed stipulation. If the commission accepts the stipulation, or modifies the stipulation with the agreement of the parties, the commission shall enter an order in conformity with the terms of the stipulation. If the commission rejects the stipulation, the commission staff may consider whether:

- (a) An investigation should be initiated; or

(b) The matter may appropriately be resolved in another manner.

(7) In determining whether to accept the stipulation, the commission may consider the nature of the violation(s), and any aggravating and/or mitigating factors as provided in WAC 390-37-182.

Violations:			
Respondent failed to file or timely file an accurate or complete: (1) Statement of Financial Affairs (F-1 report) / (2) Candidate Registration / (C-1 report) / (3) Lobbyist Monthly Expense Report (L-2 report) / (4) Lobbyist Employer Annual Report (L-3 report) and (5) Local Treasurer's Annual Report (T-1 report).			
	1st Occasion	2nd Occasion	3rd Occasion
Filed missing report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$300	\$300 - \$600	\$600 - \$1,000
Report is filed late and is incomplete or inaccurate.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
Respondent failed to file or timely file accurate and complete campaign disclosure reports:			
Cash Receipts Monetary Contributions Report (C-3 report)			
Filed missing C-3 report or amended C-3 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failed to timely deposit monetary contributions within five business days of receipt.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failed to include employer and occupation information for contributors of more than \$100.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Campaign Summary Receipts and Expenditures Report (C-4 report)			
Filed missing C-4 report or amended C-4 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failed to properly report the "purpose" of an expenditure under RCW 42.17A.240(6) or 42.17A.255 (5)(b).	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failed to properly report expenditures made on behalf of a candidate or political committee by any person, agency, firm, organization, etc.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failed to report a contractual contingent liability.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failed to properly dispose of surplus funds.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failed to properly make campaign books of account available for public inspection as required immediately preceding the date of an election.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Independent Expenditure Report (C-6 report)			
Filed missing C-6 report or amended C-6 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Report is incomplete or inaccurate.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Out-of-State Political Committee Report (C-5 report)			
Filed missing C-5 report or amended C-5 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Last Minute Contribution Report (LMC report)			
Filed missing LMC report or amended LMC report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Exceeding Contribution Limits			
Refunded contributions after being notified of the complaint, over limit contributions were not significant, and respondent provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250

Other Alleged Violations			
Exceeding Mini Reporting Threshold			
Filed C-3 and C-4 reports for full reporting after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failure to file electronically			
Filed C-3 and C-4 reports electronically after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Use of public facilities for the purpose of assisting a campaign for the election of any person to any office, or for the promotion of or opposition to any ballot proposition.			
Use of public facilities was incidental and isolated, and evidence was not submitted indicating that the use may have affected the outcome of the election.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failure to file Lobbyist Registration report (L-1 report)			
Filed missing L-1 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$300	\$300 - \$600	\$600 - \$1,000
Failure to File Agency Lobbying Report (L-5 report)			
Filed missing L-5 report or amended L-5 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$300	\$300 - \$600	\$600 - \$1,000
Grassroots Lobbying Report (L-6 report)			
Filed missing L-6 report or amended L-6 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$300	\$300 - \$600	\$600 - \$1,000
Sponsor identification requirements for political advertising			
Political advertising failed to include any sponsor identification, or included improper or misleading sponsor identification.	\$0 - \$300	\$300 - \$600	\$600 - \$1,000
Party preference requirement for political advertising			
Political advertising failed to include a candidate's party preference.	\$0 - \$300	\$300 - \$600	\$600 - \$1,000
Use of current picture requirement in political advertising			
Political advertising fails to include at least one picture of the candidate used in the advertising that was taken within the last five years, that is no smaller than any other picture of the same candidate used in the same advertisement.	\$0 - \$300	\$300 - \$600	\$600 - \$1,000
Political advertising or electioneering communication—Libel or defamation per se			
Political advertising or an electioneering communication that contains a false statement of material fact about a candidate for public office.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
Political advertising or an electioneering communication that falsely represents that a candidate is the incumbent for the office sought when in fact the candidate is not the incumbent.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
Political advertising or an electioneering communication that makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
Commercial advertisers—Public inspection of documents			

Commercial advertisers who after accepting or providing political advertising or electioneering communications during an election campaign fail to maintain documents or books of account as required by WAC 390-16-050.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
Candidates and political committees—Public inspection of books of accounts			
Candidates or political committees who fail to accommodate requests for public inspection as required by WAC 390-16-043.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
Limitations on employers or labor organizations			
Failed to maintain open for public inspection, during normal business hours, documents and books of accounts showing a copy of each employee's request for funds to be withheld for transfer to a political committee.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400

(8) In a matter where the PDC staff have completed an investigation or resolved the matter as a technical correction, as authorized in RCW 42.17A.755, the schedule set forth in the table above is not applicable.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-37-063 Enforcement procedures—Demand for information—Subpoenas. (1) During the course of ~~((an))~~ a PDC audit or ~~((an))~~ investigation, the executive director may issue a subpoena directed to any person who probably possesses information which is relevant and material to the audit or the investigation. The subpoena shall:

- (a) Specifically describe the information which is sought, and
- (b) Set forth a reasonable time and place for the production of the information, and

(c) Notify the person that if the information is not produced, the executive director will apply to the superior court for an appropriate order or other remedy.

The subpoena may be personally delivered or sent by certified mail, return receipt requested.

(2) The commission or the presiding officer may issue a subpoena under RCW 42.17A.110(6) and WAC 390-37-120 to compel persons to appear and give testimony and may require the production of any books, papers, correspondence, ~~((memorandums))~~ memoranda or other ~~((documents which))~~ evidence that the commission deems relevant and material.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

WAC 390-37-070 Enforcement procedures—Complaints dismissed by executive director after an investigation has been commenced. The executive director, ~~((with the concurrence of the chair or the chair's designee commissioner,))~~ at any time prior to consideration by the commission, may dismiss a complaint which on its face, or as shown by investigation, does ~~((not show))~~ provide reason to believe that a ~~((material))~~ violation ~~((of the sections of chapter 42.17A RCW that~~

~~are enforced by the commission))~~ has occurred, shows that the respondent is in substantial compliance with the relevant statutes or rules, or shows that formal enforcement action is not warranted. The executive director shall report at each regular commission meeting all complaints dismissed.

NEW SECTION

WAC 390-37-071 Enforcement procedures—Initial hearing (case status review prior to ninety days). (1) After initiating an investigation pursuant to WAC 390-37-060, the executive director will conduct a case status review, referred to as an initial hearing in RCW 42.17A.755. The case status review is not an adjudicative proceeding conducted pursuant to the Administrative Procedure Act (chapter 34.05 RCW). Its purpose is to ensure the investigation, is being conducted expeditiously and to provide an opportunity to discuss possible alternative resolutions.

(2) The case status review will be conducted within ninety days of the complaint being filed in the matter, and may be held by telephone conference or in-person at a time and place specified by PDC staff. Notice of the case status review will be delivered electronically whenever possible.

(3) Participation in the case status review by the respondent is not mandatory. The failure to participate in the hearing will not prejudice any rights of the respondent with respect to the investigation or potential adjudication of the matter.

(4) The case status review shall have a set time limit as determined by the executive director.

(5) At the case status review, the executive director shall have the authority to:

(a) Provide the respondent with a brief opportunity to explain the respondent's view of the matter, including why further investigation may not be warranted;

(b) Identify any available options to resolve the matter;

(c) When appropriate, encourage the parties to enter into a stipulated agreement as authorized by RCW 42.17A.755 and WAC 390-37-062; and

(d) Consider such other matters as may aid in the investigation, disposition or resolution of the matter.

(6) Following the case status review, the executive director shall direct PDC staff to update the PDC's public case-tracking database pursuant to WAC 390-37-005.

(7) The executive director shall report to the commission, no later than the next regular commission meeting, any case status reviews held. The executive director's report shall include an overview of matters addressed and any review outcomes.

(8) Nothing in this section shall limit the authority of the commission or its staff to resolve a complaint or refer a matter to the attorney general at any time.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

WAC 390-37-075 Enforcement procedures—Deferred enforcement (~~—Process~~) after an investigation has been commenced. (1) As provided by WAC 390-37-060, the chair or the chair's designee commissioner may authorize deferred enforcement:

(a) Following a (~~formal investigation~~) case status review provided for in WAC 390-37-071, referred to as an initial hearing in RCW 42.17A.755, in lieu of a formal investigation;

(b) Following an investigation, in lieu of a notice of administrative charges for an adjudicative proceeding; or

~~((b))~~ (c) After a notice of administrative charges, prior to an adjudicative proceeding.

(2) The executive director will recommend to the chair or the chair's designee commissioner the conditions of a deferred enforcement. The conditions shall be clearly defined and agreed to by the respondent, along with the consequences for failure to meet the conditions of the deferral. Negotiations regarding deferred enforcement shall be informal and without prejudice to rights of a participant in the negotiations.

(3) With concurrence of the chair or the chair's designee commissioner, the executive director or designee (commission staff) shall memorialize the pertinent facts and the conditions of the deferral (~~in~~) by electronic writing to the respondent, together with the consequences for failure to meet the conditions of the deferral. The agreement shall be signed by (~~staff~~) the executive director and the respondent. Staff shall notify the respondent that any administrative charges issued in the matter are stayed pending satisfaction of the deferral conditions.

(4) Once the deferral conditions are met, the complaint shall be dismissed with no further investigation or action as provided by WAC 390-37-070.

(5) If the deferral conditions are not met, the complaint shall proceed in accordance with WAC 390-37-060.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

WAC 390-37-090 Enforcement procedures—Cases resolvable by stipulation after an investigation and prior to an enforcement hearing (adjudicative proceeding) (~~, or by other alternative dispute mechanisms~~). (1) RCW 34.05.060 authorizes agencies to establish by rule specific procedures for attempting and executing informal settlement of matters. The following procedures are available for informal dispute resolution prior to an adjudicative proceeding that may make more elaborate proceedings under the Administrative Procedure Act unnecessary.

(a) Any enforcement matter before the commission which has not yet been heard in an adjudicative proceeding may be resolved by settlement. The respondent shall communicate (~~his or her~~) their request to the executive director or designee (commission staff), setting

forth all pertinent facts and the desired remedy. Settlement negotiations shall be informal and without prejudice to rights of a participant in the negotiations.

(b) ~~((When))~~ The executive director and respondent may also agree to ~~((terms of any))~~ a stipulation of facts, violations, and/or penalty~~((7))~~. The commission staff shall prepare the stipulation for presentation to the commission.

(c) Any proposed stipulation shall be in writing, must include a brief recitation of the facts, violations and penalty, and be signed by each party to the stipulation or ~~((his or her))~~ their representative. The executive director shall sign for ~~((commission))~~ PDC staff. Any stipulation to facts, violations, or penalty shall be provided by 4:00 p.m. three business days preceding the hearing. The commission has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the commission accepts the stipulation or modifies the stipulation with the agreement of the ~~((opposing party))~~ parties, the commission shall enter an order in conformity with the terms of the stipulation. If the commission rejects the stipulation or ~~((the opposing))~~ either party does not agree to the commission's proposed modifications to the stipulation, and if no revised stipulation or staff report is presented to the commission, then an adjudicative proceeding shall be scheduled and held.

(2) Parties are encouraged to be creative in resolving cases without further litigation where appropriate.

(3) ~~((Following a))~~ As part of the commission's review of any proposed stipulation of facts ~~((or))~~, violations and law or other alternative resolution ruled on at a hearing, if the commission determines certain additional sanctions or other steps are required by the respondent ~~((as a result of the alternative dispute resolution including stipulations))~~ and states on the record that ~~((it))~~ the commission intends to enter an order, and the respondent does not timely raise an objection at the hearing, it shall be presumed that the respondent has waived objections and appeals, and agrees to the entry of the order.

AMENDATORY SECTION (Amending WSR 17-03-004, filed 1/4/17, effective 2/4/17)

WAC 390-37-100 Enforcement procedures—Conduct of hearings (adjudicative proceedings). (1) An enforcement hearing (adjudicative proceeding) shall be conducted pursuant to the Administrative Procedure Act (chapter 34.05 RCW). Chapter 390-37 WAC further governs these proceedings, as supplemented by chapter 10-08 WAC. To the extent chapters 390-37 and 10-08 WAC differ, chapter 390-37 WAC controls.

(2) An adjudicative proceeding shall be heard by the commission, except for brief adjudicative proceedings which are conducted by the chair or the chair's designee.

(3) The commission or the presiding officer shall have the authority to:

- (a) Determine the order of presentation of evidence;
- (b) Administer oaths and affirmations;
- (c) Rule on procedural matters, objections, and motions;
- (d) Rule on offers of proof and receive relevant evidence;

(e) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;

(f) Interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(g) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties;

(h) Take official notice of facts pursuant to RCW 34.05.452(5);

(i) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

(j) Permit or require oral argument or briefs and determine the time limits for submission thereof;

(k) Issue an order of default pursuant to RCW 34.05.440;

(l) Take any other action necessary and authorized by any applicable statute or rule;

(m) Waive any requirement of these rules unless a party shows that it would be prejudiced by such a waiver; and

(n) The commission chair or the chair's designee may conduct the procedural aspects of the adjudicative proceeding under (a) through (m) of this subsection, unless a majority of members present vote to seek a full commission decision on any particular matter.

(4) The commission may decide dispositive motions, and any other matters referred to it by the presiding officer at a prehearing conference.

(5) After an adjudicative proceeding by the commission, the commission may (~~find that~~):

(a) Find that the respondent did not violate (~~the act~~) chapter 42.17A RCW, as alleged, and dismiss the case; or

(b) Find that the respondent violated chapter 42.17A RCW, as alleged, and determine the sanction, if any, to be imposed; or

(c) Find that the respondent is in apparent violation of chapter 42.17A RCW, (~~its own~~) and that the commission's statutory remedies are inadequate, and enter (~~its~~) an order referring the matter to the attorney general or another appropriate law enforcement agency as provided in RCW 42.17A.105 and 42.17A.755.

(6) Upon the conclusion of an adjudicative proceeding or after submission of memos, briefs or proposed findings when requested by the presiding officer, the commission:

(a) Shall set forth in writing its findings of fact, conclusions of law and decision on the merits of the case and enter an order within thirty days, unless extended by the presiding officer due to the complexity of the case or other good cause; and

(b) Shall serve the (~~respondent~~) parties by electronic communication a copy of the findings of fact, conclusions of law and decision and order.

(7) Once the commission has drafted and approved an order, the executive director is authorized to sign orders on behalf of the commission at the discretion of the commission.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

WAC 390-37-103 Enforcement procedures—Commission options following receipt of a staff report on alleged violations. Upon receipt of a PDC staff report concerning alleged violations (~~(of those sections of chapter 42.17A RCW that the commission enforces)~~), the commission may:

- (1) Direct the executive director to (~~(issue)~~) pursue an alternative (~~(response)~~) resolution as provided in WAC 390-37-060;
- (2) Defer enforcement as provided in WAC 390-37-075;
- (3) Issue an order; or
- (4) Refer the matter or apparent violations to the attorney general or other enforcement agency pursuant to RCW 42.17A.105(5) and (~~(42.17A.750)~~) 42.17A.755.

AMENDATORY SECTION (Amending WSR 17-03-004, filed 1/4/17, effective 2/4/17)

WAC 390-37-105 Enforcement hearings (adjudicative proceedings)—Prehearing conference (~~(—Rule)~~). (1) In any prehearing conference prior to an enforcement hearing (adjudicative proceeding), the (~~(chair or the chair's designee upon his/her)~~) presiding officer upon their own motion or upon request by one of the parties or their qualified representative, may direct the parties to appear at a specified time and place for a conference to consider:

- (a) Identifying and simplifying issues;
- (b) The necessity of any amendments to the (~~(pleadings)~~) case documents;
- (c) The possibility of obtaining stipulations, admissions of facts and of documents;
- (d) Limiting the number and consolidation of the examination of witnesses; (~~(and)~~)
- (e) Submitting proposed orders;
- (f) Deadlines for briefs, exhibit and witness lists and objections thereto, proposed orders, and other procedural (~~(and such other)~~) matters as may aid in the conduct of the proceeding.

(2) Prehearing conferences may be presided over by the chair or (~~(his/her)~~) designee commissioner as presiding officer.

(3) Prehearing conferences may be held by telephone conference call or at a time and place specified by the presiding officer.

(4) In a prehearing conference, the presiding officer may hear prehearing motions regarding preliminary matters such as motions *in limine*, discovery motions, and other similar matters. The presiding officer shall not consider dispositive motions in a prehearing conference and such motions will automatically be scheduled for consideration before the commission.

(5) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken and decisions made at the conference and the date on which objections to the order are to be filed and served. If no objection to the order is timely filed with

the presiding officer, the order shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

(6) When the chair or ((his/her)) designee commissioner presides over a prehearing conference, ((he or she)) the presiding officer is acting as a quasi-judicial body which relates to a quasi-judicial matter between named parties. Therefore, a prehearing conference is not subject to chapter 42.30 RCW, Open Public Meetings Act.

AMENDATORY SECTION (Amending WSR 03-22-065, filed 11/4/03, effective 12/5/03)

WAC 390-37-120 Enforcement hearings (adjudicative proceedings)—Subpoenas—Discovery—Hearings. (1) The commission, or presiding officer, may issue subpoenas for discovery, subpoenas to persons to appear and give testimony, and may require the production of any books, papers, correspondence, memorandums, or other records deemed relevant or material and the commission or presiding officer may issue protective orders as a part of an enforcement hearing. The ((agency)) PDC staff or its legal representative may issue subpoenas as may the attorney of the party against whom action is being taken. Upon request of the commission or presiding officer, all subpoenas must be filed with the commission, together with proof of proper service. Such subpoenas will issue and may be enforced in the form and manner set forth in RCW 34.05.446 and WAC 10-08-120(4). The subpoena may be personally delivered or sent by certified mail, return receipt requested.

(2) The commission, or presiding officer, upon motion or before the time specified in the subpoena for compliance therewith, may:

(a) Quash or modify the subpoena if it is unreasonable and oppressive; or

(b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(3) The attendance of witnesses and such production of evidence may be required from any place within the state of Washington to any location where a hearing is being conducted.

AMENDATORY SECTION (Amending WSR 03-22-065, filed 11/4/03, effective 12/5/03)

WAC 390-37-130 Enforcement hearings (adjudicative proceedings)—Depositions and interrogatories—Right to take. Unless otherwise provided, any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for use as evidence in the hearing. The deposition of a commissioner, the executive director, or ((assistant director)) other staff, may only be taken upon application to the commission, for good cause shown, and only in those circumstances where the statements or depositions of other staff members would not reveal the information, evidence, or details needed by the party for the case. The attendance of witnesses to

a deposition may be compelled by use of a subpoena. Depositions shall be taken only in accordance with this rule and the rules on subpoenas.

AMENDATORY SECTION (Amending WSR 03-18-003, filed 8/20/03, effective 9/20/03)

WAC 390-37-134 Enforcement hearings (adjudicative proceedings)—Depositions and interrogatories ((in enforcement hearings (adjudicative proceedings)))—Protection of parties and deponents. After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the commission or the presiding officer in a prehearing conference may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or the commission may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression. At any time during the taking of the deposition, on motion of any party or the deponent, and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the commission or the presiding officer in a prehearing conference may order the officer conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it shall be resumed only upon the order of the agency. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

AMENDATORY SECTION (Amending WSR 17-03-004, filed 1/4/17, effective 2/4/17)

WAC 390-37-136 Enforcement hearings (adjudicative proceedings)—Production of documents and use at hearing and other hearing procedures ((adjudicative proceedings)). (1) Unless a prehearing order states otherwise, the provisions of this rule apply to evidence and written argument (legal briefs) filed and served in hearings (adjudicative proceedings). Parties or the executive director may request a prehearing conference if provisions of this rule need to be adjusted or if the provisions are not adhered to by the parties.

(2) The parties are encouraged to exchange copies of proposed exhibits, exhibit lists and witness lists prior to the deadline specified in subsection (3)(a) of this section. The parties are encouraged to exchange documents by email whenever possible. The parties are encouraged to confer and determine whether there are any objections to

the evidence and whether any agreements or stipulations can be reached regarding proposed exhibits, witnesses, and legal and factual issues.

(3) (a) Unless the commission determines otherwise, when evidence is to be offered at the adjudicative proceeding or when briefs are to be submitted at the adjudicative proceeding, the party offering the evidence or brief shall file with the commission and serve on all parties a copy of proposed exhibits, exhibit lists, witness lists, and briefs with the commission via an email to the executive director or his or her designee by the date and time designated by the executive director or designee, which is typically by 1:00 p.m. Pacific Time at least eight days prior to the hearing. The email shall provide the name of the party submitting the documents, the total number of pages, the software used to prepare the document, and the name, address, telephone number and email address of the person sending the email message.

(b) In the event electronic submission is not readily available to a *pro se* respondent or the evidence is not suited to email transmission, other means of providing these materials to the commission may be approved by the chair or the executive director, or their designees if requested in advance of the date and time in (a) of this subsection.

~~(c) ((On the day the parties provide these materials electronically to the commission, they shall also mail or otherwise deliver a paper (or hard copy) set of the materials to the commission.~~

~~(d))~~ The parties shall confirm in advance with the executive director that any documents provided electronically are able to be accessed by software available at the agency. If they are not accessible, the executive director shall direct how the documents are to be submitted.

~~((e))~~ (d) The documents are considered filed when received during actual business hours at the commission office. If received after actual business hours, they will be deemed filed the next business day.

(4) Respondent's exhibits shall be numbered R-1, R-2, etc. (~~Commission~~) PDC staff exhibits shall be numbered S-1, S-2, etc. Jointly submitted exhibits shall be numbered J-1, J-2, etc. If an exhibit is not jointly submitted but there is no objection to it by the responding party, the party offering the exhibit shall designate agreed-to exhibits on the party's exhibit list.

(5) Briefs shall contain the name of the respondent in the caption and the cause number. Briefs shall be no more than twenty-five pages, double-spaced, excluding attachments or exhibits.

(6) The parties shall inform the executive director of any special equipment necessary for the adjudicative proceeding at the time documents are filed with the commission.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

WAC 390-37-140 Brief enforcement hearings (brief adjudicative proceedings)—Authority. (1) The commission may provide a brief adjudicative proceeding for violations (~~of the sections of chapter 42.17A RCW that it enforces~~) in which the facts are undisputed, the viola-

tions appear to be relatively minor in nature, and a penalty no greater than \$1,000 will be assessed for the violations. Typical matters to be heard in a brief adjudicative proceeding include, but are not limited to, the following:

- (a) Failure to file or late filing of required reports;
 - (b) Failure to report or accurately report campaign contributions or expenditures or funds spent in lobbying;
 - (c) Use of public office facilities in election campaigns when the value of public funds expended was minimal; and
 - (d) Infractions of political advertising law regarding sponsor identification or political party identification.
- (2) The commission may utilize a penalty schedule for brief adjudicative proceedings.
- (3) Brief adjudicative proceedings are set forth in RCW 34.05.482 through 34.05.494.

AMENDATORY SECTION (Amending WSR 17-03-004, filed 1/4/17, effective 2/4/17)

WAC 390-37-142 Brief enforcement hearing (brief adjudicative proceeding)—Procedure. (1) A brief adjudicative proceeding may be presided over by the chair, or a member of the commission designated by the chair.

(2) When a violation, as described in WAC 390-37-140, is alleged, before taking action, the executive director shall send the (~~alleged violator~~) respondent notice, which shall include:

- (a) Alleged violation;
- (b) The maximum amount of the penalty that can be imposed at the hearing, relevant penalty schedules, and the amount of any proposed fine; and
- (c) Person's right to respond either (~~in~~) by electronic writing or in person (~~to explain his/her view of the matter~~).

(3) As provided in RCW 34.05.050, a respondent (~~who has been notified of a brief adjudicative proceeding~~) may waive the opportunity for a hearing by providing the following (~~prior to the hearing~~):

- (a) A signed statement of understanding;
- (b) Any missing required reports; and
- (c) A penalty payment specified by the executive director in accordance with the penalty authority of WAC 390-37-140 and the brief enforcement hearing penalty schedules of this chapter.

(4) As used in this section, the term "statement of understanding" means a written statement signed by the respondent that:

- (a) Acknowledges a violation of chapter 42.17A RCW and any relevant rules; and
- (b) Expresses the respondent's understanding that the commission will not hold any adjudicative proceeding concerning the violation.

(5) At the time of the hearing if the presiding officer believes alleged violations are of such magnitude as to merit penalties greater than one thousand dollars, the presiding officer shall immediately adjourn the hearing and direct the matter be scheduled for an adjudicative proceeding by the full commission.

(6) (~~At the time any unfavorable action is taken the presiding officer~~) Within thirty days after the hearing, the commission shall

serve upon each party a written statement describing the violation, the reasons for the decision, ((and)) the penalty imposed((. Within ten days, the presiding officer shall give the parties a brief written statement of the reasons for the decision)), and information about any internal administrative review or reconsideration available. The executive director is authorized to sign the decision on behalf of the presiding officer.

(7) The written decision of the presiding officer is an initial order. If no review is taken of the initial order, the initial order shall be the final order.

AMENDATORY SECTION (Amending WSR 18-10-088, filed 5/1/18, effective 6/1/18)

WAC 390-37-143 Brief enforcement hearings (brief adjudicative proceeding)—Penalty schedule. The presiding officer may assess a penalty up to one thousand dollars upon finding a violation of chapter 42.17A RCW or Title 390 WAC.

(1) Base penalty amounts:

Violation	1st Occasion	2nd Occasion	3rd Occasion
Failure to timely file an accurate and complete statement of financial affairs (F-1):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150	\$150 - \$300	\$300 - \$600
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150	\$300	\$600
Failed to file report by date of enforcement hearing.	\$250	\$500	\$1,000
Candidate's failure to timely file an accurate and complete registration statement (C-1)/statement of financial affairs (F-1):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150 per report	\$150 - \$300 per report	\$300 - \$600 per report up to \$1,000
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150 per report	\$300 per report	\$600 per report up to \$1,000
Failed to file report by date of enforcement hearing.	\$250 per report	\$500 per report	consideration by full commission
Failure to timely file an accurate and complete lobbyist monthly expense report (L-2):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150	\$150 - \$300	\$300 - \$600
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150	\$300	\$600
Failed to file report by date of enforcement hearing.	\$250	\$500	\$1,000
Failure to timely file an accurate and complete lobbyist employer report (L-3):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150	\$150 - \$300	\$300 - \$600

Violation	1st Occasion	2nd Occasion	3rd Occasion
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150	\$300	\$600
Failed to file report by date of enforcement hearing.	\$250	\$500	\$1,000
Failure to timely file accurate and complete disclosure reports:			
Political committee registration (C-1pc).	\$150	\$300	\$600
Statement of contributions deposit (C-3).	\$150	\$300	\$600
Summary of total contributions and expenditures (C-4).	\$150	\$300	\$600
Independent expenditures and electioneering communications (C-6).	\$150	\$300	\$600
Last minute contribution report (LMC).	\$150	\$300	\$600
Out-of-state committee report (C-5).	\$150	\$300	\$600
Annual report of major contributors (C-7).	\$150	\$300	\$600
Failure to timely file accurate and complete reports disclosing lobbying activities:			
Lobbyist registration (L-1).	\$150	\$300	\$600
Public agency lobbying report (L-5).	\$150	\$300	\$600
Grass roots lobbying report (L-6).	\$150	\$300	\$600
Failure to file electronically.	\$350	\$650	\$1,000
Exceeding contribution limits.	\$150	\$300	\$600
Exceeding mini reporting threshold.	\$150	\$300	\$600
Failure to comply with political advertising sponsor identification requirements.	\$150	\$300	\$600
Failure to include required candidate's party preference in political advertising.	\$150	\$300	\$600
Failure to comply with other political advertising requirements, RCW 42.17A.330 through 42.17A.345.	\$150	\$300	\$600
Use of public facilities to assist a campaign for election or promote a ballot measure.	\$150	\$300	\$600
Treasurer's failure to timely file an accurate and complete annual treasurer's report (T-1):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150	\$150 - \$300	\$300 - \$600
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150	\$300	\$600
Failed to file report by date of enforcement hearing.	\$250	\$500	\$1,000

"Occasion" means established violation. Only violations in the last five years will be considered for the purpose of determining second and third occasions.

(2) In determining the appropriate penalty, the presiding officer may consider the nature of the violation and aggravating and mitigating factors, including:

(a) Whether the respondent is a first-time filer;

(b) The respondent's compliance history for the last five years, including whether the noncompliance was isolated or limited in nature, indicative of systematic or ongoing problems, or part of a pattern of violations by the respondent, or in the case of a political committee or other entity, part of a pattern of violations by the respondent's officers, staff, principal decision makers, consultants, or sponsoring organization;

(c) The respondent's unpaid penalties from a previous enforcement action;

(d) The impact on the public, including whether the noncompliance deprived the public of timely or accurate information during a time-sensitive period, or otherwise had a significant or material impact on the public;

(e) The amount of financial activity by the respondent during the statement period or election cycle;

(f) Whether the late or unreported activity was significant in amount or duration under the circumstances, including in proportion to the total amount of expenditures by the respondent in the campaign or statement period;

(g) Corrective action or other remedial measures initiated by respondent prior to enforcement action, or promptly taken when noncompliance brought to respondent's attention;

(h) Good faith efforts to comply, including consultation with ~~((commission))~~ PDC staff prior to initiation of enforcement action and cooperation with ~~((commission))~~ PDC staff during enforcement action, and a demonstrated wish to acknowledge and take responsibility for the violation;

(i) Personal emergency or illness of the respondent or member of his or her immediate family;

(j) Other emergencies such as fire, flood, or utility failure preventing filing;

(k) Sophistication of respondent or the financing, staffing, or size of the respondent's campaign or organization; and

(l) ~~((Commission))~~ PDC staff, third-party vendor, or equipment error, including technical problems at the agency preventing or delaying electronic filing.

(3) The presiding officer has authority to suspend all or a portion of an assessed 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 the entry of the order in that case.

(4) If, on the third occasion, a respondent has outstanding penalties or judgments, the matter will be directed to the full commission for consideration.

(5) 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. Cases will automatically be scheduled before the full commission for an enforcement action when the respondent:

(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.

AMENDATORY SECTION (Amending WSR 17-03-004, filed 1/4/17, effective 2/4/17)

WAC 390-37-144 Brief enforcement hearing (brief adjudicative proceedings)—~~((Administrative review procedures))~~ Process for full commission review. (1) The commission shall conduct a review of the initial order upon the electronic written ~~((or oral))~~ request of a

party if the commission receives the request within twenty-one days after the service of the initial order. "Service" is defined as the date the order was deposited in the U.S. mail per RCW 34.05.010(19), electronically distributed or personally served. The party seeking review shall state the reason for the review, and identify what alleged errors are contained in the initial order.

(2) If (~~the parties have~~) a party has not requested review, the commission may conduct a review of the initial order upon its own motion and without notice to the parties, but it may not take any action on review less favorable to any party than the original order without giving that party notice and an opportunity to explain that party's view of the matter.

(3) The order on review shall be (~~in~~) by electronic writing stating the findings made, and the reasons for the decision, and notice that reconsideration and judicial review are available. The order on review shall be entered within twenty days after the date of the initial order or of the request for review, whichever is later.

(4) If the commission is not scheduled to meet within twenty days after the date of the initial order or request for review and therefore cannot dispose of the request within that time period, the request is:

(a) Deemed denied under RCW 34.05.491(5) and the initial order becomes final;

(b) Considered a request for reconsideration under WAC 390-37-150; and

(c) Scheduled for consideration and disposition at the next commission meeting at which it is practicable to do so.

AMENDATORY SECTION (Amending WSR 17-03-004, filed 1/4/17, effective 2/4/17)

WAC 390-37-150 Commission reconsideration and judicial review of decisions. (1) For purposes of this rule, "decision" means any findings, conclusions, order, or other action by the commission which is reviewable by a court.

(2) A decision may be reconsidered only upon (a) the (~~written~~) request of a party (~~thereby~~) by electronic writing or (b) the motion or written request, by electronic writing, of a commissioner who voted on the prevailing side when that decision was made.

(3) Such a request or motion for reconsideration shall be filed electronically at the office of the public disclosure commission (PDC), or motion made, within ten days of service of the decision of which reconsideration is sought. Copies of the request or motion shall be served electronically on all parties of record at the time the request for reconsideration or motion is filed.

(4) A request or motion for reconsideration shall specify the grounds therefor. Grounds for reconsideration shall be limited to:

(a) A request for review was deemed denied in accordance with WAC 390-37-144(4);

(b) New facts or legal authorities that could not have been brought to the commission's attention with reasonable diligence in time for the review process in WAC 390-37-144. If errors of fact are alleged, the requester must identify the specific evidence in the pri-

or proceeding on which the requester is relying. If errors of law are alleged, the requester must identify the specific citation; or

(c) Significant typographical or ministerial errors in the order.

(5) Upon being served with a decision, the respondent may treat that decision as final for the purpose of petitioning for judicial review. The commission may not reconsider any decision after being served with a petition for judicial review.

(6) When a request for reconsideration is served, or motion made, enforcement of the decision of which reconsideration is sought shall be stayed and the decision shall not be final until the commission has acted on the request or motion for reconsideration.

(7) The commission is deemed to have denied the request or motion for reconsideration (~~(or motion)~~) if, within twenty days from the date the request or motion is filed, the commission does not either (a) dispose of the request or motion, or (b) serve the parties with written notice specifying the date it will act upon the request or motion.

(8) The commission shall act on the reconsideration request or motion, at the next meeting at which it practicably may do so, by:

(a) Deciding whether to reconsider its decision; and

(b) If it decides to do so, either:

(i) Affirming its decision; or

(ii) Withdrawing or modifying the final order; or

(iii) Setting the matter for further hearing.

Provided, that before a decision may be amended other than by lowering a penalty, the respondent shall be given notice and an opportunity to be heard if, and in the same manner as, required for the original decision.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

WAC 390-37-182 Penalty factors. (1) In assessing a penalty, the commission considers the purposes of chapter 42.17A RCW, including the public's right to know of the financing of political campaigns, lobbying and the financial affairs of elected officials and candidates as declared in the policy of RCW 42.17A.001; and, promoting compliance with the law. The commission also considers and applies RCW 42.17A.755 and may consider any of the additional factors described in subsection (3) of this section.

(2) Under RCW 42.17A.755, the commission:

(a) May waive a penalty for a first-time actual violation;

(b) Shall assess a penalty for a second actual violation (~~(of the same rule)~~) by the same person or individual, regardless if the person or individual committed the violation for a different political committee;

(c) Shall assess successively increased penalties for succeeding actual violations (~~(of the same rule.)~~) pursuant to the following schedule:

Violations:			
<u>Respondent failed to file or timely file an accurate or complete: (1) Statement of Financial Affairs (F-1 report) / (2) Candidate Registration / (C-1 report) / (3) Lobbyist Monthly Expense Report (L-2 report) / (4) Lobbyist Employer Annual Report (L-3 report) and (5) Local Treasurer's Annual Report (T-1 report).</u>			
	<u>1st Occasion</u>	<u>2nd Occasion</u>	<u>3rd Occasion</u>

<u>Filed missing report after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$500</u>	<u>\$500 - \$1,500</u>	<u>\$1,500 - \$2,500</u>
<u>Report is filed late and is incomplete or inaccurate.</u>	<u>\$0 - \$1,000</u>	<u>\$1,000 - \$2,000</u>	<u>\$2,000 - \$3,000</u>
Respondent failed to file or timely file accurate and complete campaign disclosure reports:			
Cash Receipts Monetary Contributions Report (C-3 report)			
<u>Filed missing C-3 report or amended C-3 report after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500- \$2,500</u>	<u>\$2,500 - \$10,000</u>
<u>Failed to timely deposit monetary contributions within five business days of receipt.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500- \$2,500</u>	<u>\$2,500 - \$10,000</u>
<u>Failed to include employer and occupation information for contributors of more than \$100.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500- \$2,500</u>	<u>\$2,500 - \$10,000</u>
Campaign Summary Receipts and Expenditures Report (C-4 report)			
<u>Filed missing C-4 report or amended C-4 report after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500- \$2,500</u>	<u>\$2,500 - \$10,000</u>
<u>Failed to properly report the "purpose" of an expenditure under RCW 42.17A.240(6) or 42.17A.255 (5)(b).</u>	<u>\$0 - \$1,500</u>	<u>\$1,500- \$2,500</u>	<u>\$2,500 - \$10,000</u>
<u>Failed to properly report expenditures made on behalf of a candidate or political committee by any person, agency, firm, organization, etc.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500- \$2,500</u>	<u>\$2,500 - \$10,000</u>
<u>Failed to report a contractual contingent liability.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500- \$2,500</u>	<u>\$2,500 - \$10,000</u>
<u>Failed to properly dispose of surplus funds.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500- \$2,500</u>	<u>\$2,500 - \$10,000</u>
<u>Failed to properly make campaign books of account available for public inspection as required immediately preceding the date of an election.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500- \$2,500</u>	<u>\$2,500 - \$10,000</u>
Independent Expenditure Report (C-6 report)			
<u>Filed missing C-6 report or amended C-6 report after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$1,000</u>	<u>\$1,000 - \$2,000</u>	<u>\$2,500 - \$10,000</u>
<u>Report is filed late and is incomplete or inaccurate.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500 - \$2,500</u>	<u>\$2,500 - \$10,000</u>
Out-of-State Political Committee Report (C-5 report)			
<u>Filed missing C-5 report or amended C-5 report after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$1,000</u>	<u>\$1,000 - \$2,000</u>	<u>\$2,500 - \$10,000</u>
Last Minute Contribution Report (LMC report)			
<u>Filed missing LMC report or amended LMC report after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$1,000</u>	<u>\$1,000 - \$2,000</u>	<u>\$2,500 - \$10,000</u>
Exceeding contribution limits			
<u>Refunded contributions after being notified of the complaint, over limit contributions were not significant, and respondent provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500 - \$2,500</u>	<u>\$2,500 - \$10,000</u>
Other Alleged Violations:			
Exceeding mini reporting threshold			
<u>Filed C-3 and C-4 reports for full reporting after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$1,000</u>	<u>\$1,000 - \$2,000</u>	<u>\$2,500 - \$10,000</u>
Failure to file electronically			
<u>Filed C-3 and C-4 reports electronically after being notified about the complaint, and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$1,000</u>	<u>\$1,000 - \$2,000</u>	<u>\$2,500 - \$10,000</u>

<u>Use of public facilities for the purpose of assisting a campaign for the election of any person to any office, or for the promotion of or opposition to any ballot proposition</u>			
<u>Use of public facilities was incidental and isolated, and evidence was not submitted indicating that the use may have affected the outcome of the election.</u>	<u>\$0 - \$1,000</u>	<u>\$1,000 - \$2,000</u>	<u>\$2,500 - \$10,000</u>
<u>Failure to File Lobbyist Registration Report (L-1 report)</u>			
<u>Filed missing L-1 report after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$500</u>	<u>\$500 - \$1,500</u>	<u>\$1,500 - \$2,500</u>
<u>Failure to File Agency Lobbying Report (L-5 report)</u>			
<u>Filed missing L-5 report or amended L-5 report after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$500</u>	<u>\$500 - \$1,500</u>	<u>\$1,500 - \$2,500</u>
<u>Grassroots Lobbying Report (L-6 report)</u>			
<u>Filed missing L-6 report or amended L-6 report after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$500</u>	<u>\$500 - \$1,500</u>	<u>\$1,500 - \$2,500</u>
<u>Sponsor identification requirements for political advertising</u>			
<u>Political advertising failed to include any sponsor identification or included improper or misleading sponsor identification.</u>	<u>\$0 - \$500</u>	<u>\$500 - \$1,500</u>	<u>\$1,500 - \$2,500</u>
<u>Party preference requirement for political advertising</u>			
<u>Political advertising failed to include a candidate's party preference.</u>	<u>\$0 - \$500</u>	<u>\$500 - \$1,500</u>	<u>\$1,500 - \$2,500</u>
<u>Use of current picture requirement in political advertising</u>			
<u>Political advertising fails to include at least one picture of the candidate used in the advertising that was taken within the last five years, that is no smaller than any other picture of the same candidate used in the same advertisement.</u>	<u>\$0 - \$500</u>	<u>\$500 - \$1,000</u>	<u>\$1,000 - \$1,500</u>
<u>Political advertising or electioneering communication—Libel or defamation per se</u>			
<u>Political advertising or an electioneering communication that contains a false statement of material fact about a candidate for public office.</u>	<u>\$0 - \$500</u>	<u>\$500 - \$1,500</u>	<u>\$1,500 - \$2,500</u>
<u>Political advertising or an electioneering communication that falsely represents that a candidate is the incumbent for the office sought when in fact the candidate is not the incumbent.</u>	<u>\$0 - \$500</u>	<u>\$500 - \$1,500</u>	<u>\$1,500 - \$2,500</u>
<u>Political advertising or an electioneering communication that makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.</u>	<u>\$0 - \$600</u>	<u>\$600 - \$1,200</u>	<u>\$1,200 - \$2,400</u>
<u>Commercial advertisers—Public inspection of documents</u>			
<u>Commercial advertisers who after accepting or providing political advertising or electioneering communications during an election campaign fail to maintain documents or books of account as required by WAC 390-18-050.</u>	<u>\$0 - \$600</u>	<u>\$600 - \$1,200</u>	<u>\$1,200 - \$2,400</u>
<u>Candidates and political committees—Public inspection of books of account</u>			
<u>Candidates or political committees who fail to accommodate requests for public inspections as required by WAC 390-16-043.</u>	<u>\$0 - \$600</u>	<u>\$600 - \$1,200</u>	<u>\$1,200 - \$2,400</u>
<u>Limitations on employers or labor organizations</u>			

<u>Failed to maintain open for public inspection, during normal business hours, documents and books of accounts showing a copy of each employee's request for funds to be withheld for transfer to a political committee.</u>	<u>\$0 - \$600</u>	<u>\$600 - \$1,200</u>	<u>\$1,200 - \$2,400</u>
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(3) In addition to the requirements of RCW 42.17A.755, the commission may consider the nature of the violation and any relevant circumstances, including the following factors:

(a) The respondent's compliance history, including whether the noncompliance was isolated or limited in nature, indicative of systematic or ongoing problems, or part of a pattern of violations by the respondent, or in the case of a political committee or other entity, part of a pattern of violations by the respondent's officers, staff, principal decision makers, consultants, or sponsoring organization;

(b) The impact on the public, including whether the noncompliance deprived the public of timely or accurate information during a time-sensitive period, or otherwise had a significant or material impact on the public;

(c) Sophistication of respondent or the financing, staffing, or size of the respondent's campaign or organization;

(d) Amount of financial activity by the respondent during the statement period or election cycle;

(e) Whether the noncompliance resulted from a knowing or intentional effort to conceal, deceive or mislead, or violate the law or rule, or from collusive behavior;

(f) Whether the late or unreported activity was significant in amount or duration under the circumstances, including in proportion to the total amount of expenditures by the respondent in the campaign or statement period;

(g) Whether the respondent or any person, including an entity or organization, benefited politically or economically from the noncompliance;

(h) Personal emergency or illness of the respondent or member of his or her immediate family;

(i) Other emergencies such as fire, flood, or utility failure preventing filing;

(j) ~~((Commission))~~ PDC staff or equipment error, including technical problems at the ~~((agency))~~ PDC preventing or delaying electronic filing;

(k) The respondent's demonstrated good-faith uncertainty concerning staff guidance or instructions;

(l) Corrective action or other remedial measures initiated by respondent prior to enforcement action, or promptly taken when noncompliance brought to respondent's attention (e.g., filing missing reports, amending incomplete or inaccurate reports, returning prohibited or overlimit contributions);

(m) Whether the respondent is a first-time filer;

(n) Good faith efforts to comply, including consultation with ~~((commission))~~ PDC staff prior to initiation of enforcement action and cooperation with ~~((commission))~~ PDC staff during enforcement action, and a demonstrated wish to acknowledge and take responsibility for the violation;

(o) Penalties imposed in factually similar cases; and

(p) Other factors relevant to a particular case.

(4) The commission~~((, and the presiding officer in brief adjudicative proceedings,))~~ may consider the factors in subsections (1) through (3) of this section in determining whether to suspend a por-

tion or all of a penalty upon identified conditions, and whether to accept, reject, or modify a stipulated penalty amount recommended by the parties.

(5) ~~((The presiding officer in brief adjudicative proceedings may consider whether any of the factors in subsections (1) through (3) of this section are factors that warrant directing a case to the full commission.))~~ Notwithstanding the above schedule, the commission may assess a penalty of up to ten thousand dollars per violation pursuant to RCW 42.17A.755, based on the aggravating factors set forth in subsections (1) through (3) of this section.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 390-37-041	Citizen action notice procedures— Allegations submitted to the attorney general's office and/or prosecuting attorneys.
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