

**Administrative Procedures Act Petition for Emergency Rule
Amending WAC 390-37-060 (as established via emergency rule)
Providing for Transparency at Initial Hearings**

Proposed Amendment

WAC 390-37-060 *“Enforcement procedures—Alternative responses to noncompliance—Investigation of complaints—Initiation of adjudicative proceeding”*

(1) Upon receipt of a complaint, the PDC staff will conduct an initial review of the complaint 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 respondent why no further action is warranted.

(b) The executive director may resolve a matter as a remedial violation or technical correction pursuant to RCW 42.17A.755.

(c) The executive director may resolve any complaint that alleges minor 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 be clearly explained in the written warning. A respondent’s failure to meet conditions may result in a complaint being reopened.

(d) 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.

(e) The executive director may initiate an investigation whenever an initial review of a complaint indicates that a material violation may have occurred.

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

(3) If the executive director determines an investigation is warranted, an initial hearing (~~case status review~~) shall be held pursuant to WAC 390-37-071 within 90 days. The initial hearing shall be:

(a) Publically noticed on the commission’s website 10 business days before it is held,

(b) Open for members of the public to attend and observe the proceedings in full.

(c) Initial hearings shall be audio-recorded by the PDC and made available to the Commissioners so that they may listen to the proceedings if they so choose.

(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~~, and members of the public 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 to the respondent and complainant; members of the public shall be notified electronically via the commission's subscriber listserv.

Summary

During the last meeting of the PDC on June 28, 2018, I presented to the Commission an APA petition to adopt a rule requiring that initial hearings be publically noticed and made open to the public.

After hearing the petition, the Commission voted in favor of the proposal pursuant to RCW 34.05.330(1)(b).

After the proposal had been adopted, I asked the Commission if they could clarify to staff whether or not initial hearings (the first of which was going to be held the next day) would be open to the public as a matter of practice. My request was clearly heard by everyone in the room.

Before the Commission had the opportunity to address this issue, Executive Director Lavallee quickly interjected that the issue would be addressed later in the meeting. A few minutes after he said this, I sent an e-mail to remind him I was hoping that an answer could be presented before the first initial hearing was held.

Executive Director Lavallee did not revisit this issue. After the meeting had concluded, I sent an e-mail to Peter, BG, and Kim requesting a simple "yes" or "no" answer as to whether or not the hearing would be made open to the public. I informed them that if I did not receive a response that I would file this petition, having exhausted every other reasonable means of receiving an answer on this subject. See attached e-mail thread.

To date, I have still not received a response.

I will reiterate the fact that voters have a right to see timely and accurate information transmitted through campaign finance filings, personal financial disclosures, and sponsor identification. When this does not occur, the only recourse for an individual is to file a complaint.

I believe that the new PDC enforcement procedures as established under ESHB 2938 have the opportunity to be successful. But only if they adjudicate complaints a) within a reasonable period of time after being submitted, and b) with a penalty that deters others from committing the same violation.

I respect PDC staff and their efforts to enforce our state's campaign finance laws.

But *initial hearings* are becoming a mechanism by which the PDC sweeps complaints under the proverbial rug rather than resolving the issue. Even after the agency was successful in realizing its agency request legislation via ESHB 2938 (and receiving a much needed infusion of new resources), this rug is beginning to bulge. And people are beginning to notice.

Members of the public should be allowed to observe these *initial hearing* proceedings if they so desire. Through comments from attendees and stakeholders, the PDC may be able to gather information it can use to improve initial hearings and make them a meaningful part of the enforcement process.

If the Commission believes that my petition is without merit, I request that the petition be denied so that the agency can provide me with a written denial, specifically addressing the concerns I have raised and the alternative means by which it will address my concerns pursuant to RCW 34.05.330(1)(a).

Otherwise, I urge the Commission to adopt my proposal and immediately request that PDC staff make initial hearings open and available to the public to attend. I cannot think of a single reason why these hearings should not be made open to the public.

Best,

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