

**State of Washington  
PUBLIC DISCLOSURE COMMISSION**

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908  
(360) 753-1111 • FAX (360) 753-1112

Toll Free 1-877-601-2828 • E-mail: [pdc@pdc.wa.gov](mailto:pdc@pdc.wa.gov) • Website: [www.pdc.wa.gov](http://www.pdc.wa.gov)

**MINUTES – Regular Meeting**

Evergreen Plaza Building, Room 206  
711 Capitol Way  
Olympia, Washington

9:30 a.m.

August 25, 2016

**COMMISSION MEMBERS PRESENT**

Anne Levinson, Chair  
John Bridges, Vice Chair  
Jack Johnson, Member

**STAFF PRESENT**

Evelyn Fielding Lopez, Executive Director  
Penny Allen, Assistant Attorney General  
Kurt Young, Compliance Officer  
Jennifer Hansen, Filer Specialist  
James Gutholm, Chief Information Officer  
Lori Anderson, Communication and Training Officer  
Jana Greer, Executive Assistant

**COMMISSION MEMBER ABSENT**

Katrina Asay, Member

The regular meeting of the Public Disclosure Commission was called to order by Commission Chair Anne Levinson at 9:30 a.m.

**Public Comments**

Commission Chair Levinson called the meeting to order and asked for Commissioner comments.

There were no public comments.

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**Meeting Minutes**

- July 28, 2016 Regular Commission Meeting
- August 8, 2016 Special Meeting

Moved by Commissioner Johnson, seconded by Commissioner Bridges that:

**The Commission approve the July 28, 2016 regular meeting and the August 8, 2016 special meeting minutes as presented.**

**Motion 16-42**

The motion passed.

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**Reporting Modification**

Jennifer Hansen presented Kelli Curtis's request for reporting modification to the Commission for consideration.

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- *Kelli Curtis* – Community Council Member, Houghton Community Municipal Corporation

Curt Blake (Spouse of Kelli Curtis) participated via telephone.

Kelli Curtis requested a reporting modification that would exempt her from disclosing the business and other governmental customers that paid \$12,000, during the previous 12 months, to Spaceflight Industries, Inc. Her spouse is President and board member with less than 10% ownership interest in Spaceflight Industries, Inc.

Staff offered no recommendation for the Commission on this matter.

**Motion 16-43**

Moved by Commissioner Bridges, seconded by Commissioner Johnson that:

**The Commission grant the partial reporting modification**

**as requested, finding that literal application would cause a manifestly unreasonable hardship on the applicant and that a limited modification would not frustrate the purposes of the act.**

The motion passed.

Commission and staff continued the discussion on the use of campaign funds for post-election expenses.

The original discussion of the matter began at the June Commission meeting where a briefing memo was prepared that discussed past Commission actions and suggested questions that the Commission may want to address.

The Commission asked for additional stakeholder engagement on the matter. In response, Staff sent a survey out in July and also asked questions about spending contributions made for the primary and the general election. Staff also asked a question related to how transfers of funds are reported.

Lori Anderson reported on the results and feedback from the recent stakeholder survey and asked for any further direction from the Commission.

Stakeholders did not raise any policy questions, some responses noted that some of the information currently available is not easily found.

Stakeholders were asked if surplus monies should be used for recounts, litigation, and/or election related items. The majority of responders said yes, this use was acceptable.

Commissioner Johnson commented:

Campaign funds and surplus funds should categorically be allowed for recounts and for litigation related to the campaign. This is integral to a pursuit of an office and to the outcome of the election. It is not personal and it does not need to depend on whether it is paying on a debt incurred just before the election was over versus items beyond the election.

Commissioner Levinson commented:

It is not fair to the candidate or the campaign to prohibit use if the cost of the litigation is directly related to the campaign. If it is litigation that is an aspect of the campaign, then it seems logical to allow that as campaign expenditure. That would include litigation over signatures in a ballot measure.

Stakeholders were asked if transferring surplus funds into an active campaign should be tracked and reported as

## **Continued Discussion | Use of Campaign Funds for Post-Election Expenses**

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- Review of survey results and feedback from stakeholder engagement.

transfers rather than the same as other contributions. Majority of responders said yes. Staff feels that developing a method to show fund transfers in some manner distinct from contributions would be a good idea. However, changing the reporting is not just a matter of changing a form, it is a matter of changing the PDC's electronic filing program. Therefore, this idea will be added to the project list for IT projects that require additional funding or programming.

Commissioner Levinson asked staff for clarification on why rulemaking would not be the direction to go for using surplus funds with regards to campaign litigation.

Staff has not yet developed a recommendation as to whether rulemaking is needed. If campaign funds can be used for litigation expenses, then a rule may not be needed. However, clarification regarding use of funds for post-election litigation expenses would be a good idea in light of the fact the Seattle Ethics and Elections Commission has determined that this is not an allowable use of funds for campaigns that fall under their regulations.

Next Steps/Follow up

R14: Staff will bring a recommendation to the Commission to approach this by rule or another alternative at a future Commission meeting.

R2: Surplus funds schedule: Staff will proceed with rulemaking.

R13: Use of Primary and General Election Contributions: Staff changed instructions after some questions came up in an enforcement matter, and the new instructions seem to have addressed concerns.

R18: Identification of "transfers" on contribution reports: This will be added to the IT work plan as this will require programming changes to ORCA.

**Proposed Rule-Making Process and Legislative Agenda**

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- Follow up on three rules under consideration
  - Appealing Commission Orders

The Commission had also asked Commission Counsel Penny Allen, Assistant Attorney General, to look at and review the following rules for advice and clarity:

- R6: Appealing Commission Orders
  - Several of the agency rules refer to "business days" rather than "calendar days" for calculating deadlines. As a result, Counsel reviewed the underlying statutes for hearings and appeals.
  - For the most part, the PDC rules are consistent with the Administrative Procedures Act and the Model Rules of Administrative Procedure. The main point of

departure for the PDC rules is over the use of business days. The impact of using business days rather than calendar days is that it increases the timeframes. For example, a rule that requires a request for review filed 20 business days after an initial order will give the appealing party something closer to 30 calendar days and this creates confusion. Counsel suggested that the PDC rules be aligned with the Model Rules use and the Administrative Procedures Act. This would require a change in the rules that provide for “business days.” The PDC should consider adopting a general rule on calculating time periods that provides that any amount of days less than 7 would mean “business days” and any amount greater than 7 would be calculated with calendar days. A general definition of what a business day is should also be adopted as there is not one currently in the PDC WAC’s.

Next Steps/Follow up

R6: Staff will add this into the rule-making schedule (see below)

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o Addressing Repeat Violators

• L14: Addressing Repeat Violators:

The Commission has been concerned about how to better gain cooperation and have individuals adhere to the rules when going from campaign to campaign. Typically, the PDC has penalized the campaign and not the person.

Ms. Allen explained that the Commission has the authority to penalize the Treasurer of a campaign separately from the candidate and the campaign. The state’s campaign finance laws specifically set out mandatory duties for the Treasurer. The PDC has not had many occasions to focus on the Treasurer, so if more oversight of Treasurers is going to occur, there should be communication with campaigns and notice that Treasurer activities will also be investigated and requirements enforced.

If the PDC wanted to hold other campaign staff and vendors responsible, it would need statutory changes establishing certain duties by other campaign staff, or some registration of campaign that the PDC would oversee/administer.

Commissioner Johnson:

The PDC has enough flexibility under the current statutes to hold campaign accountable, and Commissioner Johnson was concerned that the PDC would not want to take the burden of

compliance off the campaign and candidate.

Commissioner Bridges was also concerned that the PDC should be looking for ways to simplify requirements where possible. Generally, the Commission would like to see staff make more robust use of the tools available, then revisit the statutes and rules if there are problems that cannot be addressed.

Commissioner Levinson noted that the challenge comes when it is not a candidate campaign, but is a ballot measure campaign. Who is the responsible party then? In many of those cases the ballot measure may involve significant amounts of money, and usually has a campaign made up of volunteers. The active parties are the campaign consultants, and they may not be subject to direct regulation. However, it makes sense to review problems as they develop and revisit the rules and laws as needed.

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- Commission Hearing Rules

- R7: Commission Hearing Rules:

Counsel was also asked to review the PDC hearing rules and the Model Rules and the APA. Generally, there is good alignment between the PDC rules and the Model Rules

There is some language in the preconference rules that could be expanded. Within the Commission rules there is a limitation on the type of documents that can be amended at the pre-hearing conference. Counsel recommended expanding the language.

The current PDC enforcement proceedings rule specifically left out a section of the model rules which would allow the Commission to call witnesses and request additional exhibits that may be necessary to complete a record.

There are deadlines within the Commission enforcement rules that make it more difficult to receive timely information, but the parties may agree on different timeframes through a pre-hearing conference and order.

Commissioner Bridges noted that on the issue of the Commission calling additional witnesses or requesting additional materials, he worries about stepping over the line and becoming more prosecutorial rather than remaining in an

adjudicative role.

Counsel suggested making some rule changes to bring the PDC hearing rules into closer alignment with the APA Model Rules. These will be added to the rulemaking process.

- Rules Development Plan

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Lori Anderson reported on the progress of the rules development agenda which was filed on July 29 with the Code Reviser's office.

Rules Development:

- **R1** Provide guidance as to whether or when language on signature gathering petitions for ballot measures constitutes political advertising.

Staff will prepare draft language for an Interpretation for the Commission to review in the December meeting. Staff will work collaboratively with the Secretary of State's office.

- **R2** Establish surplus funds reporting schedule.

Staff has filed the proposal and will bring draft language to the Commission at the September meeting.

- **R3** Require candidates to directly pay proportionate share of joint campaign expenses.

Rulemaking process has been started and staff will bring draft language to the Commission at the September meeting.

- **R4** Timely filing presumption for reports received within 'X' days of due date.

Rulemaking process has been started and staff will bring draft language to the Commission at the October meeting.

- **R5** Modify definition of contribution to exclude snip/paste of web photos and other neutral website content.

Staff plans to have draft language for an interpretation for the Commission to review at the September meeting.

- **R6** Use calendar days instead of business days for request for reconsideration or appeal of a Commission ruling.

Staff will incorporate this into the rulemaking schedule.

- **R7** Address differences between PDC hearing rules and State model administrative hearing procedures.

Staff will incorporate this into the rulemaking schedule.

- **R8 – R10** Penalty Schedules

Staff suggested that additional penalty schedules might expand the use of Statement of Understanding (SOU) in enforcement situations.

- **R11** Repeal implied incumbency section of political advertising rule WAC 390-18-040(6).

Staff has filed a request for an expedited rule and the waiting period will end October 31, 2016.

- **R12** Update and clarify duties for County officials receiving PDC reports

Staff has filed a request for an expedited rule and the waiting period will end October 31, 2016.

- **R13** Clarify the law regarding segregation and reporting of primary and general election contributions (and define “continued use” and “reserved”)

Further action is not needed. Staff will send the Commission the changed instructions that are now available to filers.

- **R14** Clarify the law regarding use of funds for recounts

Staff will bring a recommendation to the Commission to approach this by rule or another alternative at a future Commission meeting.

- **R15** Clarify what triggers registering as a political committee when a person supports or opposes a ballot measure

As a first step, Staff will work with County elections officials and the Secretary of State to identify the operative dates whenever a ballot measure is filed.

- **R16** Provide guidance to the regulated community regarding use of public facilities to support ballot measures, especially marketing and polling for measures that may be placed on future ballots.

Staff noted that this will require special stakeholder work that has not yet begun. Because this involves school districts staff will wait until the school year begins. Staff will also coordinate with the Executive Ethics Board.

- **R17** Require more details about independent expenditures reported

- **R18** Designate surplus funds transfers on C-3 (campaign contribution) reports

Both items R17 and R18 require programming work and will be added to the list of IT projects that need funding or programming.

Projects to Scope Discussion:

- **P1** Address reporting issues regarding an individual or entity with several initiative committees.

There is a concern about potential misuse of monies when an entity has authority over several committees. Staff will research what are the current rules and the potential issues that may develop in Washington and other states regarding initiative and referenda campaigns, and then set up a ballot measure financing study session for the Commission.

- **P2** Consider options for modifying campaign requirements for low dollar campaigns

Could a lobbyist make a request to be relieved of monthly reporting? The Commission may change the reporting rules for low dollar campaigns, but that does not appear to cover lobbyist required reports.

The Commission would like to develop rules to exempt low dollar campaigns and candidates, and would like to know whether they have options to vary the reports filed by lobbyists. Staff will work on this and return with options.

- **P3** Make F-1 penalties automatic if the person fails to file after the deadline and a warning; may appeal order

This item was covered in the enforcement process overview at the meeting.

- **P4** How does a voucher program work with anti-bundling laws?

Director Lopez is currently serving on the Seattle Ethics and Elections Commission (SEEC) advisory group. Even if Initiative 1464 does not move forward this election, the application of contribution rules to the vouchers will remain an interesting question. There is a need to determine if the vouchers are subject to this rule and if the anti-bundling prohibition should apply.

Next Steps/Follow up

- **R1** - Staff will prepare draft language for an Interpretation for the Commission to review in December meeting.
- **R2** - Staff will bring draft language to the Commission at the September meeting.
- **R3** - Staff will bring draft language to the Commission

at the September meeting.

- **R4** - Staff will bring draft language to the Commission at the October meeting.
- **R5** - Staff will bring draft language to the Commission at the September meeting.
- **R6** - Staff will incorporate this into the rulemaking schedule.
- **R7** - Staff will incorporate this into the rulemaking schedule.
- **R8 – R10** Staff suggested that additional penalty schedules might expand the use of Statement of Understanding (SOU). Staff will bring suggestions to the September Commission meeting.
- **R11** - Staff has filed a request for an expedited rule.
- **R12** - Staff has filed a request for an expedited rule
- **R13** - Staff will send the Commission the changed instructions.
- **R14** - Staff will bring a recommendation to the Commission to approach this by rule or another alternative at a future Commission meeting.
- **R15**- Staff will work with County officials and the Secretary of State to have a protocol in place regarding operative dates for when a ballot measure is filed.
- **R16** - Staff noted that this will require special stakeholder work that has not yet begun. Because this involves school districts staff will wait until the school year begins. Staff will also coordinate with the Executive Ethics Board.
- **R17 - R18** - Both items require programming work and are added to the IT project list (items require additional funding or programming changes)
- **P1** - Staff will research what are the current rules and the potential issues that may develop in Washington and other states.
- **P2** - The Commission asked staff to come back with options for low dollar campaigns, candidates, and lobbyists. Staff suggested adding the lobbyist reporting modification to the 2017 rules development agenda.
- **P3** - This item was covered in the enforcement process overview at the meeting.

- Legislative Proposal Plan

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- **P4** - There is a need to determine if the vouchers are subject to contributions rules such as the anti-bundling rules should apply.

PDC legislative proposals:

- **L1 – L5** Disclosure Improvements - Address Timing & Uniformity

The improvements would affect information disclosed and the timing provisions.

- **L6 – L10** Modernize Personal Financial Disclosure (F-1 Reports)

The cease and desist language would be modified in the statute. This is where the language has proved most difficult.

- **L11** - Update Inflationary Adjustments

Freeze the \$1,000 threshold contained in the definition and of independent expenditure and the \$100 maximum allowed for a cash contribution.

Staff will return at the next PDC meeting with draft bills.

- **L13 - 18** Also Priorities - Other Factors to Consider (Some items will be impacted by Initiative 1464).

L13 – The Commission and staff have decided to move forward with an alternative process improvement approach rather than a legislative approach. James Gutholm will add this to the IT work plan to implement and track.

L14 – this was discussed during the rulemaking discussion earlier in the meeting.

L15 - 22 These are “Tier 2” items that are on hold at this time.

Next Steps/Follow up

Staff will have Z-drafts for the Commission to review at the September Commission meeting.

Once completed, Staff will then move into the stakeholder process.

- Executive Director

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Director Lopez and Jana Greer have been working to make sure the PDC has up to date policies that are in compliance with the Department of Enterprise Services small agency requirements. Chair Levinson has asked the Staff to take the opportunity to ensure other internal policies the PDC needs to have are added or brought up to date.

The agency has a conflict of interest form that staff completes annually but does not yet have a policy in place.

Director Lopez suggested staff draft a PDC policy that

has the limits that the Commissioners are subject to and apply these to PDC staff.

Commissioner Levinson is disinclined to create the same constraining approach that the Commissioners have, she does not feel the need to implement this at this level for the staff. For example, the limit on involvement in federal campaigns need not be extended to staff because the PDC does not regulate those campaigns.

Language should be included that balances the employee's 1<sup>st</sup> Amendment rights against the type of communication that may impact the fairness or effectiveness of the agency.

Commissioner Johnson noted that the State Ethics regulation language may already cover some of this.

Next Steps/Follow up

Staff will continue to review the DES policy requirements and update the PDC policies.

Staff will provide the Commission a list of internal agency policies and then provide draft policy language for the Commission to review.

Director Lopez reported on the Automotive Trade Organization (AUTO) lawsuit. They have filed a petition for judicial review of agency action to review the letter Director Lopez sent on June 16 explaining that the State was not going to commence an action.

The Attorney General's office (AGO) notified Director Lopez that the AGO would have a conflict and would not be able to represent the PDC in the judicial review. They are however willing to setup a Special Assistant Attorney General (SAAG) contract for the PDC to use.

Director Lopez has reached out to firms that have experience with the APA laws and asked them to review the case. She is waiting for a response at this time and will send out information once all is in place.

Director Lopez noted that she was heading out on a road trip next week to meet with Senator Honeyford, the Tri-Cities Herald, Senator Billig, Representative Holy, the Spokesman Review, Representative Hawkins, and to do an editorial board with Wenatchee World. She will be discussing what the PDC legislative agenda will be and the current PDC budget situation.

- Chief Technology Officer

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Staff has finished the project wrap-up for the Lobbyist electronic application.

What went well in the project:

- Great participation from stakeholders
- Interactive process

What could have been done better:

- Communication - Projects are about communication and no matter how much we are doing it can always be done better.

On August 3<sup>rd</sup> Phase 2 of the application was released and filers are now able to go in and start filing online.

Roughly for the period of March – May of this year there are 350 paper filers and 352 electronically filing. In June there were less electronic filers (272) and more paper filers (348). In July, 426 E-filed and 154 were paper filed.

Training videos are planned that will highlight how easy it is to file the second report.

Mr. Gutholm demonstrated what the general public would see when viewing the new application.

Lori Anderson had no additional items to add to her written activity report.

- Communications and Training Officer

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- Compliance

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Compliance case load continues to reduce the older matters: 1 matter from 2013, 2 matters from 2014, 5 matters from 2015. There are 27 current matters for this month, staff continues to keep on top of these as well. Staff is also working on two 45 Citizen Action Letters.

Penalty Collection:

Director Lopez asked the Commission if they would like to display names of those unpaid penalties that have gone through the process in a list “Wall-of-Shame” visible on the PDC website.

The Commission is not in favor of this and asks that staff continue to make the collections process successful.

Jana Greer noted that with the recent changes staff has made to this process, the new approach with DES processing the invoices and payments is showing to be successful.

*Next Steps/Follow up*

Staff will continue to work with DES using the new process and procedures.

## **Enforcement Discussion/Update**

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- Update on Alternative Responses to Minor and Technical Alleged Violations

Tony Perkins provided statistics on the use of alternative responses to minor or technical violations. Staff has resolved 25 complaints through an alternative response. They continue to look at deferred enforcement and will be in contact with the Commission Chair when proposing any.

Staff asked for guidance from the Commission on:

- Use of warnings

Staff have felt that if campaign has a formal warning then subsequent issues should be something more

than a warning.

Commissioner Johnson commented that he would hate to say you can never have a second warning, but it's a judgment call and you don't want a warning to not be taken seriously.

Commissioner Levinson noted that the goal was to give discretion to make decisions weighing these various considerations. Length of time for warning period would also be a matter of discretion.

She added that it would be a good idea to document or commemorate the thought process in determining what alternative to use to guard against allegations of unfairness/favoritism and to help with consistency of application.

- The use of Statements of Understanding

Staff anticipated that SOU's would work with penalty schedules, but the cases that staff has used an SOU for so far this year have not been cases that fit into one of the areas that has penalty schedules.

Next Steps/Follow up

Staff will develop ideas for additional penalty schedules for the Commission to consider.

- Group Enforcement Presentation and Discussion

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Kurt Young presented an overview of the workload, process, resources used, and issues experienced with Group Enforcement.

Staff has looked to find more common phrasing to use so that hearing notices can be more standardized.

Commissioner Bridges suggested that a standard form with check boxes might be used. Commissioner Levinson suggested staff also check with the Department of Revenue and other agencies that require reports or payments to find out if they have had success with any other tools in obtaining compliance.

- Process and Materials

This item was held over for a discussion on a future meeting date.

- Proposed Rule-Making Discussion

This item was held over for a discussion on a future meeting date.

**Adjourn**

The meeting adjourned at 2:30 p.m.

**Approved September 22, 2016**