

**State of Washington**  
**PUBLIC DISCLOSURE COMMISSION**  
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**MINUTES – Regular Meeting**

9:30 a.m. | December 8, 2016  
Evergreen Plaza Building, Room 206  
711 Capitol Way  
Olympia, Washington

**Commission Members Present**

Anne Levinson, Chair; Jack Johnson, Member, Katrina Asay, Member.

John Bridges, Vice Chair (**participated via telephone**).

**Staff Present**

Evelyn Fielding Lopez, Executive Director; Penny Allen, Assistant Attorney General; Chad Standifer, Assistant Attorney General; Jennifer Hansen, Filer Assistance Specialist; Phil Stutzman, Compliance Officer; Kurt Young, Compliance Office; James Gutholm, Chief Information Officer; and Jana Greer, Executive Assistant.

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

**Public Comment** [PDC Mtg Video](#)

No public comment was made at this time.

**Meeting Minutes** | [PDC Mtg Video](#)

October 19 2016 Special meeting.

October 27, 2016 Regular meeting.

November 02, 2016 Special meeting.

**Motion 16-63** Moved by Commissioner Asay, seconded by Commissioner Johnson that:

The Commission approve the October 19, 2016; October 27, 2016; and November 02, 2016 meeting minutes.

The motion passed.

**2017 Regular Commission Meeting Dates** | [PDC Mtg Video](#)

The commission reviewed the proposed regular meeting dates for 2017:

Thursday, January 26	Thursday, July 27
Thursday, February 23	Thursday, August 24
Thursday, March 23	Thursday, September 28
Thursday, April 27	Thursday, October 26
Thursday, May 25	Thursday, December 7 (Nov/Dec mtg)
Thursday, June 22	

**Motion 16-64** Moved by Commissioner Johnson, seconded by Commissioner Asay that:

The Commission approve the calendared regular commission meetings for 2017 as presented.

The motion passed.

Next Steps/Follow Up: Jana Greer will file the approved meeting dates with the Office of the Code Reviser, and post the meeting dates for 2017 on the PDC website.

**Reporting Modification Request** | *Jay J. Manning, Trustee, Eastern Washington University*  
[PDC Mtg Video](#)

Jennifer Hansen presented Jay Manning's reporting modification request.

Additional information was provided to the Commission, a copy of an email submitted by Glen Morgan, expressing concerns about Jay Manning's reporting modification request.

Mr. Manning requested a reporting modification that would exempt him from listing business customers that made payments of \$12,000 or more to the law firm of Cascadia Law Group, PLLC, in 2015. He also requested a retroactive reporting modification that would exempt him from listing the business customers that made payments of \$12,000 or more to the law firm of Cascadia Law Group, PLLC, during the entire 12-month period prior to his appointment, November 2014 to November 2015.

Mr. Manning did disclose the identity of clients for whom he had provided legal work for during November 2014 to December 2015. He also stated that there are no reportable governmental agencies for whom Cascadia Law Group, PLLC performed legal work for during November 2014 to December 2015. He identified that no payments were made by Eastern Washington University to Cascadia Law Group from November 2014 to December 2015.

Ms. Hansen noted for the record that Mr. Manning should have filed the outstanding reports in November 2015 after he was appointed and then an additional report in April 2016. These reports were officially signed and mailed to the PDC in November 2016. The reports are very late and Mr. Manning is aware that Ms. Hansen would be reading this into the record.

Through normal PDC compliance process Mr. Manning was included in a group enforcement action and was provided an opportunity to file in April 2016 and was sent a warning letter, his response to the letter is what removed him from the list.

Ms. Hansen stated that a concern that Glenn Morgan brought to PDC's attention was that there could potentially be some clients that should have been listed and have not been, specifically, JZ Knight.

She suggested that if the request was approved today and the Commission requests additional information, Mr. Manning could amend the report as needed; or, the Commissions could postpone the decision until the information has been provided and verified.

Ms. Hansen cannot verify Mr. Morgan's concerns he expressed in his email at this meeting.

Commissioner Johnson stated that there needs to be a distinction between the modification request and whether he has complied with the modification. If the issue is that personal work has been performed for JZ Knight and/or other related companies, then that should have been reported and this would be a compliance issue.

If the request for modification would affect his obligation to report work that he has done for JZ Knight and/or other related companies then this is a different issue. It is not clear and we do not have facts before us.

Ms. Hansen stated that she believes Mr. Manning has complied with the request and provided the clients he has done business for. His reporting modification was required in accordance with the rule that allows him to disclose the clients he has done business for.

The piece that she is not confident on is whether or not he is in compliance. Therefore, this is a compliance issue.

**Public Comment:** Glenn Morgan, representing himself.

Glen Morgan addressed the Commission with his concerns of Mr. Manning's request for a reporting modification.

**Motion 16-65** Moved by Commissioner Johnson, seconded by Commissioner Asay that:

The Commission defer action on Jay Manning's request for a reporting modification at this time to allow for additional information to be submitted, a review and consideration to be made.

The motion passed.

Next Steps/Follow Up: Jennifer Hansen will contact Mr. Manning for the additional information and determine whether there is requirement to report or not. She will schedule Mr. Manning's request for reporting modification for a future date for the Commission to consider.

**Rules** | [PDC Mtg Video](#)

Public hearings were held for the Commission to consider adopting new and amended rules. Executive Director Lopez noted that stakeholder outreach for input has been completed.

Executive Director Lopez presented the proposed and amended rules for consideration and final public comment:

Proposed

- [new] WAC 390-16-236 Surplus funds accounts - Disclosure. Clarifies process for registering a surplus funds account and establishes a schedule for disclosing expenditures from the account.

No public comment.

**Motion 16-66** Moved by Commissioner Johnson, seconded by Commissioner Asay that:

The Commission adopt WAC 390-16-236 as presented.

The motion passed.

- WAC 390-16-234 Transfers of candidate funds. Establishes conditions under which a candidate may transfer campaign funds to another candidate for the purpose of making joint campaign contributions.

No public comment.

**Motion 16-67** Moved by Commissioner Asay, seconded by Commissioner Johnson that:

The Commission adopt WAC 390-16-234 as presented.

The motion passed.

- [new] WAC 390-05-195 Application of RCW 42.17A.140(1). Establishes a timely filed presumption for mailed reports that are received by the Public Disclosure Commission within five business days of the statutory filing deadline and that are not required to be filed electronically.

No public comment.

**Motion 16-68** Moved by Commissioner Johnson, seconded by Commissioner Asay that:

The Commission adopt WAC 390-05-195 as presented.

The motion passed.

### Updates

- WAC 390-37-041 Citizen action notice procedures - Allegations submitted to the attorney general's office and/or prosecuting attorneys. Differentiates procedures for citizen action notices referred by the attorney general or prosecuting attorney solely for investigation from complaints filed with the Public Disclosure Commission and clarifies the commission's limited investigatory role when a citizen action notice is referred. Clarifies that procedures for a complaint may proceed when a complainant follows a complaint to the Commission with a citizen action notice that makes the same or very similar allegations.

Chair Levinson stated that the purpose of this language is to make more understandable to the public and the regulated community the differences between the 45-day letter authority of the Commission and the regular enforcement authority.

### Public Comment

Copies of public comment submitted via email by Tim Hamilton were distributed to the Commission.

Conner Edwards provided comment in person.

Conner Edwards testified in favor of the proposed amendment. He stated that the amendment does a lot of good things and brings the Commission in more compliance with the Open Public Meeting Act. The proposed amendment provides more notice to the respondent.

He also stated the recently made public records requests of the PDC to see if there was any agency request legislation planned for the 2017 session related to RCW 42.17A.765 Citizen action notice.

Even though the item is not being pursued this session Mr. Edwards noted that he would oppose any meaningful change to this statute. The right of a complainant to have their complaint reviewed by a superior court is essential.

Commissioner Johnson responded to the written submission from Mr. Hamilton. He stated that if the comments submitted seem to be based on a misperception in his opinion, that somehow, in connection with this rule, the commission is exercising any legal authority. When in fact the Commission is not.

This is a process by which the commission formally provide a recommendation to the people who do have legal authority under the statute.

**Motion 16-69** Moved by Commissioner Asay, seconded by Commissioner Johnson that:

The Commission adopt WAC 390-37-041 as presented.

The motion passed.

- WAC 390-37-050 Enforcement procedures - Respondent's notice of complaint.  
No public comment.

**Motion 16-70** Moved by Commissioner Johnson, seconded by Commissioner Asay that:

The Commission adopt WAC 390-37-050 as presented.

The motion passed.

- WAC 390-37-060 Enforcement procedures - Alternative responses to noncompliance- Investigation of complaints-Initiation of adjudicative proceeding. Clarifies the ten-day notice of an adjudicative proceeding or report to the Commission applies only to complaints and makes consistent the use of "day" and "business day" throughout WAC 390-37. Strikes subsection inconsistent with recent public records case law.

Commissioner Levinson noted an edit needed in sub-section (d) where it is a reference to Director instead of Executive Director.

No public comment.

**Motion 16-71** Moved by Commissioner Johnson, seconded by Commissioner Asay that:

The Commission adopt WAC 390-30-060 with edits as discussed.

The motion passed.

- WAC 390-37-100 Enforcement Procedures-Conduct of hearings (adjudicative proceedings).  
No public comment.

**Motion 16-72** Moved by Commissioner Johnson, seconded by Commissioner Asay that:

The Commission adopt WAC 390-37-100 as presented.

The motion passed.

- WAC 390-37-105 Prehearing Conference-Rule. Updates procedural rules to make consistent with the state's model administrative procedures.  
No public comment.

**Motion 16-63** Moved by Commissioner Johnson, seconded by Commissioner Asay that:

The Commission adopt WAC 390-37-105 as presented.

The motion passed.

- WAC 390-37-132 Enforcement hearings (adjudicative proceedings)-Depositions-Notice.  
No public comment.

**Motion 16-64** Moved by Commissioner Johnson, seconded by Commissioner Asay that:

The Commission adopt WAC 390-37-132 as presented.

The motion passed.

- WAC 390-37-136 Production of documents and use at hearing and other hearing procedures (adjudicative proceedings).  
No public comment.

**Motion 16-65** Moved by Commissioner Asay, seconded by Commissioner Johnson that:

The Commission adopt WAC 390-37-136 as presented.

The motion passed.

- WAC 390-37-142 Brief enforcement hearing (adjudicative proceeding)-Procedure.  
No public comment.

**Motion 16-66** Moved by Commissioner Johnson, seconded by Commissioner Asay that:

The Commission adopt WAC 390-37-142 as presented.

The motion passed.

- WAC 390-37-144 Brief adjudicative proceeding - Administrative review procedures. Makes consistent the use of “day” and “business day” throughout WAC 390-37.  
Commissioner Levinson noted technical clean-up needed to sub-section (1), remove “21 business days”  
No public comment.

**Motion 16-67** Moved by Commissioner Asay, seconded by Commissioner Johnson that:

The Commission adopt WAC 390-37-144 with edits as discussed.

The motion passed.

- WAC 390-37-150 Reconsideration and judicial review of decisions. Modernizes time period calculations for requests of reconsideration of decisions by replacing “21 business days” with “within 10 days of service.”

No public comment.

**Motion 16-68** Moved by Commissioner Asay, seconded by Commissioner Johnson that:

The Commission adopt WAC 390-37-150 as presented.

The motion passed.

- [new] WAC 390-37-143 Brief enforcement hearings (adjudicative proceeding)-Penalty schedule. Consolidates five current brief administrative proceeding penalty schedules into one and inserts penalty amounts for additional violations that may be adjudicated in brief proceedings.

Repealing current schedules, WACs 390-37-155 (electronic filing), 390-37-160 (F-1 reports), 390-37-165 (Candidate registration/F-1), 390-37-170 (L-2 reports), and 390-37-175 (L-3 reports).

No public comment.

**Motion 16-69** Moved by Commissioner Johnson, seconded by Commissioner Asay that:

The Commission adopt WAC 390-37-143 and repeal WACs 390-37-155, 390-37-160), 390-37-165, 390-37-170, and 390-37-175 as presented.

The motion passed.

Next Steps/Follow Up: Staff will make technical corrections as noted and file adopted rules with the Code Reviser. Adopted rules will take effect 31 days after the filing date.

### **Enforcement and Report to Commission** | [PDC Mtg Video](#)

Jack Louws, Whatcom County Executive; Bill Elfo, Whatcom County Sheriff; and David McEachran, Whatcom County Prosecutor, PDC Case 1122.

Phil Stutzman presented the amended executive summary and staff analysis to the Commission for PDC case 1122, involving alleged violations of RCW 42.17A.555 by using and authorizing the use of Whatcom County facilities to promote Proposition 2015-1, a ballot measure on the November 3, 2015 ballot asking voters for funds to construct and operate a new jail facility, and by assisting the 2015 re-election campaigns of Executive Louws and Sheriff Elfo.

Mr. Stutzman presented three Stipulations for the Commission's consideration, one for each Respondent, to address the charges issued on December 31, 2015 and the remaining allegations in the complaints. The Stipulation between staff and Executive Louws stipulated to two violations, and stipulated that all remaining allegations should be Whatcom County Officials (Jack Louws, Executive; Bill Elfo, Sheriff; and David McEachran) dismissed and no penalty assessed.

The Stipulations between staff and Sheriff Elfo and staff and Prosecutor McEachran are Stipulations as to Facts and No Violations or Penalty.

Staff recommended that for Executive Jack Louws (civil penalty of \$1,000 with \$500 suspended), Sheriff Bill Elfo (no violation or penalty assessed), and Prosecutor David McEachran (no violation or penalty assessed), the Commission accept the Stipulations as presented and inform the Attorney General that the Commission has acted to resolve all allegations in the 16 complaints.

Mr. Stutzman noted that Mr. Louws submitted a letter to the Commission asking to clarify, in PDC Interpretation or rules, the two issues to which he stipulated to a violation. Mr. Louws asked the PDC to send clear guidance to all public officials and agencies that a public office or agency should not target registered voters for ballot measure mailings under any circumstance. Mr. Louws also requested the Commission to clarify how information should be presented to the public regarding a ballot measure for an increase in sales tax, as contrasted with a ballot measure for an increase to property taxes.

Royce Buckingham, Deputy, Whatcom County prosecutor's office addressed the Commission.

Jack Louws, Whatcom County Executive, addressed the Commission.

**Motion 16-70** Moved by Commissioner Johnson, seconded by Commissioner Asay that:

The Commission accepts the stipulations as amended.

The motion passed.

Next Steps/Follow Up: Chair Levinson asked staff to add to work plan the recommendations made by the respondent to clarify the rules.

### **Staff Reports | [PDC Mtg Video](#)**

Executive Director Lopez reported that the agency request legislation has been submitted to the Office of Financial Management for review and consideration. Two of the request involve increased funding for the AGO services. The third request is for a 1-year request for additional cost for the outside counsel contract the PDC has entered into because of a recent lawsuit. The fourth request is for additional funding to create and fund needed positions/staff.

The Governor will issue his operation budget proposal by December 20, 2016. It is anticipated to hear some results next week.

Ms. Lopez presented the House State Government Committee which include information about the PDC budget proposals and agency request legislation.

### Personnel

PDC has vacant position at this time and are having large impact, a total of five vacancies. The first priority is to fill the Assistant Director position.

### Legislative Session update

All agency request bills have been entered into the bill tracking system. Once the bills are processed through the tracking system then staff can request the final bills from the Code Reviser and begin to get signatures and sponsors.

### Policy

A 1<sup>st</sup> draft of conflict of interest policy has been completed. Executive Director will be sending the Commission more information via email for review. The goal is to extend the prohibitions that are on the Commission as it is logical to the staff, and that staff should refrain from engaging in political campaigns and fundraising for campaign races that are regulated by the PDC.

### Citizen Action Complaints

The PDC has received a very high level of citizen action complaints, a large number of these are from one complainant and have also been filed with the AGO. Staff has been struggling with how to prioritize these matters. Staff will have to find a balance between the obligation to do a fair review and to resolve these complaints in a manner that is consistent with other complaints received.

### New matters

Seattle Executive Ethics Commission is asking PDC for an opinion on the interplay between the SEEC democracy voucher program requirements and state law requirements to bundling.

Penny Allen, AAG and Phil Stutzman will create materials on how the law works and what leeway the commission has in interpreting, and how this would work with the new democracy voucher program. The information will be given to the Commission for review to determine if a Commission interpretation should be issued.

### List of 2017 projects and ideas

2016 list of ideas have been combined into the 2017 list of ideas as well as items that have risen from meeting discussions. Once compiled the list will allow the Commission and staff to prioritize the items for 2017.

Commissioner Levinson asked that strategic plan follow-up items are added to this list as well to allow for a way to prioritize and manage the items.

### 2016 Annual report

The agency annual report is due at the end of November. Executive Director Lopez and Jana Greer have started to draft the report.

### COGEL 2016

Executive Director Lopez will be attending the 2016 annual Council on Governmental Ethics Law (COGEL) conference, and will report to the Commission at the next meeting.

### Compliance

In October an explosion of new complaints has been submitted. Some matters have 45 day complaints as well. The compliance team continues to meet weekly to review and continues to process them as soon as possible.

As of this month there are 55 open matters with more than half being submitted in November.

### Chief Information Office

James Gutholm reported on the first meeting for the open data project, a stakeholder meeting with six participants which assisted in creating a list of deliverables for the first sprint of the project.

He will continue to provide a status report of the project to the Commission as it progresses.

### **Executive Session**

The Commission went into executive session at 12:00 p.m. to discuss matters allowed in executive session pursuant to RCW 42.30.110, including but not limited to discussion of enforcement matters, pending and potential litigation with legal counsel, and review of performance of public employees.

The Commission returned to the public session at 12:30 p.m.

### **Enforcement** | [PDC Mtg Video](#)

Ann Rivers, PDC Case 15-094.

Commissioner Asay recused herself from the matter since she has had ex parte contact with the participants.

Senator Ann Rivers participated by telephone.

Dan Brady, counsel for respondent, participated in person

Kurt Young presented a Stipulation and reviewed PDC staff's report alleging that Ann Rivers, an incumbent State Senator from the 18<sup>th</sup> Legislative District and a candidate seeking re-election to that office in 2016, violated RCW 42.17A.235 and .240 by: (1) Failing to timely file Monetary Contribution reports (C-3 reports) and Campaign Summary Contribution and Expenditure reports (C-4 reports) disclosing contribution and expenditure activities undertaken for the 2016 election cycle; and (2) Inaccurately filing C-4 reports that over-reported the total Contributions and Cash on hand balances on C-4 reports filed by the Friends of Ann River by more than \$182,000.

Staff recommended that the Commission accept the Stipulation as presented.

Dan Brady and Senator Rivers addressed the commission.

**Motion 16-71** Moved by Commissioner Johnson, seconded by Commissioner Bridges that:

The Commission approve the Stipulation as presented.

The motion passed.

The meeting adjourned at 12:52 p.m.

**Minutes approved January 26, 2017**