



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: pdcc@pdcc.wa.gov • Website: www.pdcca.wa.gov

To: Members, Washington State Public Disclosure Commission
From: Lori Anderson, Communications & Training Officer
Date: November 19, 2015
Re: Rule Making – December 3, 2015 Commission Meeting
Public Hearing to Consider Adopting Rules Related to Enforcement Alternatives and
Increasing Brief Adjudicative Penalty Authority

AGENDA ITEM

On December 3, 2015, the Commission will consider adopting new and amended rules that will 1) establish alternatives to adjudicative procedures for resolving minor violations of RCW 42.17A or Title 390 WAC and 2) increase the Commission's brief adjudicative penalty authority.

BACKGROUND

In March 2015, the Commission began rule making to establish efficient and customer friendly alternatives to adjudicative proceedings for resolving complaints that allege minor or technical violations of RCW 42.17A. During a September 24 hearing to consider adopting enforcement alternative rules, the Commission heard testimony that the proposals appeared to improperly delegate to the Executive Director the Commission's authority to determine a violation of RCW 42.17A.

On October 5, the Commission revised the proposed drafts and renoted the hearing to consider adoption for December 3. Due to systems issues, related rule making to update the Executive Director's will be scheduled for the January 2016 meeting. Staff does not believe the separate hearings will delay implementing the enforcement alternative rules when they take effect in January.

The proposed rules enacting enforcement alternatives and increasing the brief adjudicative penalty authority will:

- Establish more efficient, customer friendly alternatives to adjudicative proceedings that may be used to resolve minor violations of RCW 42.17A and Title 390 WAC;
- Establish consequences for instances of non-compliance that do not warrant enforcement;
- Authorize the Executive Director to determine when a complaint may be disposed of through an alternative resolution rather than the adjudicative process;
- Increase the Commission's brief adjudicative (single commissioner) penalty authority to expand the capacity for brief hearings;
- Adjust the penalty schedules used for routine filing violations when a person fails to electronically file campaign contribution and expenditure reports, or timely file a personal financial affairs statement (F-1), candidate registration (C-1), or lobbying reports (L-2 or L-3); and

- Establish procedures under which the Commission may allow comment by a person other than the respondent during an enforcement hearing.

The proposed rules being considered are:

Proposed new rules:

- **WAC 390-37-061 Alternative responses to Non Compliance – Goals and objectives** – Factors to be considered – explains the Commission’s goals and objectives in providing for alternative responses to non-compliance, and the factors and considerations that the Executive Director may weigh in authorizing an alternative response. Also defines “minor” and “technical” violation; and
- **WAC 390-37-075 Deferred enforcement – Process** – establishes procedures for deferred enforcement as an alternative response to non-compliance.

Proposed amended rules:

- **WAC 390-37-010 Enforcement procedures – general** – inserts references to alternative resolution methods;
- **WAC 390-37-030 Enforcement procedures – Citizen complaints filed with the commission** - establishes procedures under which the Commission may allow comment by a person other than the respondent during an enforcement hearing
- **WAC 390-37-050 Enforcement procedures – Respondent’s notice of complaint** – authorizes the Executive Director to determine when appropriate and authorize an enforcement, and clarifies that any alternative response issued prior to the respondent’s notice will be confirmed in the notice;
- **WAC 390-37-060 Enforcement procedures – Alternative responses to non-compliance** – Investigation of complaints – Initiation of hearing (adjudicative proceeding) – authorizes the Executive Director to issue an alternative response, clarifies the Commission’s policy concerning inspection and copying of records collected during an investigation and, provides for timely notice of an adjudicative proceeding to the complainant;
- **WAC 390-37-070 Enforcement procedures – Complaints dismissed by Executive Director** – authorizes alternative responses to be used without first obtaining concurrence of the Chair or a Designee;
- **WAC 390-37-090 Informal settlement – Cases resolvable by stipulation prior to an enforcement hearing (adjudicative proceeding), or by other alternative dispute mechanisms** – provides for timely submission of stipulations as to facts, violations, or penalty;
- **WAC 390-37-103 Commission options following receipt of a staff report on alleged violations** – clarifies that the Commission may direct staff to issue an alternative response based on a report of investigation;
- **WAC 390-37-140 Brief enforcement hearings (adjudicative proceedings) – Authority** – increases the brief adjudicative penalty from \$500 to \$1,000;
- **WAC 390-37-142 Brief enforcement hearings (adjudicative proceeding) – Procedure** – clarifies that a respondent may waive a brief hearing by entering into a statement of understanding;
- **WAC 390-37-155 Electronic filing brief enforcement hearing penalty schedule** – increases penalty amounts;
- **WAC 390-37-160 Statement of financial affairs (F-1) penalty schedule** – increases penalty amounts;
- **WAC 390-37-165 Candidate registration statement (C-1) candidate statement of financial affairs (F-1) Penalty schedule** – increases penalty amounts;

- **WAC 390-37-170 Lobbyist monthly expense report (L-) penalty schedule** – increases penalty amounts;
- **WAC 390-37-175 Lobbyist employer report (L-3) penalty schedule** – increases penalty amounts;
- **WAC 390-37-182 Penalty factors** – aligns the language of the Commission’s penalty factors rule to proposed new WAC 390-37-056;
- **WAC 390-32-030 Complaint Publication – Fair campaign practices code – Alternative to investigation or adjudicative proceeding** – provides an alternative response to non-compliance similar to the Fair Campaign Practices Code complaint publication process.

The December 3 hearing was noted in the State Register, distributed November 4, 2015. A copy of the hearing notice is attached. No additional comments were received after publication.

COMMISSION ACTION

Staff requests the Commission adopt the proposed amendments and new rules described above. Any rules adopted on December 3 will take effect 31 days after filing with the Code Reviser.

Attachments: WSR 15-21-088

- Proposed new rules – WAC 390-37-061
WAC 390-37-075
- Proposed amended rules – WAC 390-37-010
WAC 390-37-030
WAC 390-37-050
WAC 390-37-060
WAC 390-37-070
WAC 390-37-090
WAC 390-37-103
WAC 390-37-140
WAC 390-37-142
WAC 390-37-155
WAC 390-37-160
WAC 390-37-165
WAC 390-37-170
WAC 390-37-175
WAC 390-37-182
WAC 390-32-030



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Public Disclosure Commission

Preproposal Statement of Inquiry was filed as WSR 15-09-101 ; or
 Expedited Rule Making--Proposed notice was filed as WSR _____; or
 Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Original Notice
 Supplemental Notice to WSR 15-17-133
 Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject) Supplemental information to WSR 15-17-133:

Withdrawn proposals: Proposed new WAC 390-37-056 is withdrawn. It is has been renumbered and is now submitted as proposed a new WAC 390-37-061. Proposed new WAC 390-37-058 is withdrawn. It is has been renumbered and is now submitted as proposed a new WAC 390-37-075. Proposed new WACs 390-37-055 and 390-37-057 are withdrawn and are not being resubmitted.

Proposed new rules: WAC 390-37-061 Alternative Responses to Non-Compliance – Goals and Objectives – Factors to be Considered; WAC 390-37-075 Deferred Enforcement – Process

Revisions to proposed amended rules: WAC 390-37-010 Enforcement procedures-General; WAC 390-37-050 Enforcement procedures-Respondent’s notice of complaint; WAC 390-37-060 Enforcement procedures-Investigation of complaints-Initiation of hearing; WAC 390-37-070 Enforcement procedures-Complaints dismissed by executive director; WAC 390-37-090 Informal settlement-Cases resolvable by stipulation prior to an enforcement hearing (adjudicative proceeding) or by other alternative dispute mechanisms; WAC 390-37-103 Commission options following receipt of a staff report on alleged violations

No changes to proposals submitted under WSR 15-17-133: WACs 390-37-030, 390-37-140, 390-37-142, 390-37-155, 390-37-160, 390-37-165, 390-37-170, 390-37-175, 390-37-182, and 390-32-030.

Hearing location(s):

711 Capitol Way, Rom 206
Olympia, Washington

Date: December 3, 2015 Time: 9:30 AM

Date of intended adoption: December 3, 2015
(Note: This is NOT the effective date)

Submit written comments to:

Name: Lori Anderson
Address: P O Box 49098, Olympia, WA 98504-0908 (mail)
711 Capitol Way, Rm 206, Olympia, WA (physical)
e-mail lori.anderson@pdc.wa.gov
fax (360) 753-1112 by (date) December 1, 2015

Assistance for persons with disabilities: Contact

Jana Greer by telephone

TTY () _____ or (360) 586-0544

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

During the September 24, 2015 hearing to consider adopting the proposed rules identified in WSR 15-17-133, comment was received that the proposals appeared to improperly delegate the Commission’s authority to determine whether a violation of RCW 42.17A has occurred or to assess penalties for such violation. The Commission makes the following revisions to the proposed rules:

Revisions 1) clarify that the executive director is not determining whether a violation occurred by permitting a complaint to be resolved through the application of an alternative resolution, 2) require Commission consent for deferred enforcement, and 3) expand what records are available to the public related to a pending investigation to include a copy of the respondent’s initial response.

Reasons supporting proposal: See WSR 15-17-133.

Statutory authority for adoption: RCW 42.17A.110(1)

Statute being implemented: RCW 42.17A.105(8)

Is rule necessary because of a:

Federal Law? Yes No
 Federal Court Decision? Yes No
 State Court Decision? Yes No
 If yes, CITATION: Yes No

DATE October 21, 2015

NAME (type or print) Lori Anderson

SIGNATURE

TITLE Communications & Training Officer

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 21, 2015

TIME: 8:58 AM

WSR 15-21-088

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

No increased costs to the agency are expected

Name of proponent: (person or organization)

- Private
- Public
- Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Tony Perkins	711 Capitol Way, Rm 206, Olympia, WA 98504	(360) 586-1042
Implementation.... Evelyn Lopez	711 Capitol Way, Rm 206, Olympia, WA 98504	(360) 664-2735
Enforcement..... Evelyn Lopez	711 Capitol Way, Rm 206, Olympia, WA 98504	(360) 664-2735

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No. Explain why no statement was prepared.

The implementation of these rules has minimal impact on small businesses. The PDC is not subject to the requirement to prepare a school district fiscal impact statement, per RCWs 24A.305.135 and 34.05.320.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No: Please explain:

The PDC is not an agency listed in subsection (5)(a)(i) of RCW 34.05.328. Further, the PDC does not voluntarily make that section applicable to the adoption of these rules pursuant to subsection (5)(a)(ii) and, to date, the joint administrative rules review committee has not made the section applicable to the adoption of these rules.

NEW SECTION

WAC 390-37-061 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 considers whether a formal investigation or adjudicative proceeding constitutes an efficient and effective use of public funds; or whether an alternative response better meets the commission'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 violations of chapter 42.17A RCW and Title 390 WAC.

A minor violation occurs when required information is not timely disclosed, however the public is not deprived of critical information.

A technical violation occurs when a good faith effort to comply with disclosure is made, but incomplete information is disclosed.

(2) 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) 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 investigation as provided by WAC 390-37-060.

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

An alternative response to noncompliance may be appropriate if...	A formal 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.

An alternative response to noncompliance may be appropriate if...	A formal investigation and possible adjudicative hearing may be appropriate if...
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.
Commission staff or equipment error, including technical problems at the agency prevented or delayed electronic filing.	Commission 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 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 390-37-075 Deferred enforcement—Process. (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, in lieu of a notice of administrative charges for an adjudicative proceeding; or

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

(2) The executive director will recommend to the chair 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 writing to the respondent, together with the consequences for failure to meet the conditions of the deferral. The agreement shall be signed by staff 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 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-37-010 Enforcement procedures—General. This chapter provides the procedures for 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 procedure, 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 pursuant to RCW 42.17A.105(5) and 42.17A.755.

In addition, the procedures for requesting 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 (~~((shall be))~~) is to facilitate the resolution of compliance matters in a fair and expeditious manner. The commission encourages the parties to consider alternative resolution or partial resolution procedures (~~((such as stipulations under WAC))~~) as set forth in WAC 390-37-060, 390-37-075, or 390-37-090, when appropriate. Informal settlements are encouraged by RCW 34.05.060.

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

WAC 390-37-050 Enforcement procedures—Respondent's notice of complaint. Within ten business days of receipt by the commission of a complaint which on its face appears to have merit, the commission shall notify the respondent that a complaint has been filed. 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.

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

WAC 390-37-060 Enforcement procedures—Alternative responses to noncompliance—Investigation of complaints—Initiation of (~~((hearing~~ ~~(+))~~ adjudicative proceeding(~~((+))~~)). (1) Upon receipt of a complaint, ~~the following will occur:~~

~~(a) The~~) executive director will conduct an initial review of the complaint to determine (~~((if it is obviously unfounded or frivolous or appears on its face to have merit))~~) 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 ((and/or the respondent may not be in substantial compliance with the relevant statutes and rules-

(b)) so as to warrant a formal investigation.

(a) The executive director shall return any complaint that is obviously unfounded or frivolous. The executive director will inform the complainant why the complaint is returned.

(b) 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 be clearly explained in the written warning. A respondent's failure to meet conditions may result in a complaint being reopened.

(c) 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) The director shall initiate a formal investigation whenever an initial review of a complaint indicates that a material violation of chapter 42.17A RCW may have occurred ((and/or the respondent may not be in substantial compliance with the relevant statutes and rules, the executive director may direct a formal investigation be conducted-

(e)).

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

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

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

((4)) (5) It is the policy of the commission during the course of any investigation that all records generated or collected as a result of that investigation are exempt from public inspection and copying under RCW 42.56.240(1).

(a) The records are exempt until:

(i) ((The enforcement matter is scheduled for an adjudicative proceeding;

(ii) After receiving a report on an enforcement matter, the commission accepts the investigation as complete and moves the matter forward to an adjudicative proceeding, or dismisses the complaint, or refers the matter to law enforcement authorities under RCW 42.17A.105 or 42.17A.755(3);

(iii) The commission or chair concur in a dismissal by the executive director; or

~~(iv) The commission or executive director otherwise finally disposes of the complaint.)~~ A final staff investigative report is submitted; or

(ii) The executive director issues a final disposition of the complaint through an alternative response as provided in this section.

(b) Without waiving any exemptions from public disclosure that are otherwise available for pending investigations, the commission may make public:

(i) A copy of a complaint filed with or submitted to the commission, including any attachments; ~~((and))~~

(ii) A copy of the respondent's initial response to a complaint; and

(iii) Materials concerning an enforcement matter that are placed on the commission's web site with a commission meeting agenda.

(c) If a request is made for any such record that implicates the privacy of an individual as defined in RCW 42.56.050, written notice of the records request may be provided to the individual in order that such individual may request a protective order from a court under RCW 42.56.540.

(d) Certain documents provided to the commission shall be returned to candidates, campaigns, or political committees as required by RCW 42.17A.105 within seven calendar days of the commission's final action upon completion of an audit or field investigation.

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

WAC 390-37-070 Enforcement procedures—Complaints dismissed by executive director. 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 reason to believe that a material violation of the sections of chapter 42.17A RCW that are enforced by the commission has occurred ~~((and/or))~~, shows that the respondent is in substantial compliance with the relevant statutes or rules, or shows that formal enforcement action is not warranted.

AMENDATORY SECTION (Amending WSR 06-14-057, filed 6/29/06, effective 7/30/06)

WAC 390-37-090 ~~((Informal settlement—))~~Cases resolvable by stipulation 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 set-

tlement. The respondent shall communicate his or her 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 agree to terms of any stipulation of facts, violations, and/or penalty, commission staff shall prepare the stipulation for presentation to the commission.

(c) Any proposed stipulation shall be in writing and signed by each party to the stipulation or his or her representative. The executive director shall sign for commission staff. Any stipulation to facts ~~((and)),~~ violations, or penalty shall be provided ~~((prior to or at the hearing. Stipulations to penalty shall be provided))~~ by 4:00 p.m. ~~((the))~~ 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, the commission shall enter an order in conformity with the terms of the stipulation. If the commission rejects the stipulation or the opposing 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 stipulation of facts or law, if the commission determines certain sanctions or other steps are required by the respondent as a result of the alternative dispute resolution including stipulations and that it 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 12-01-047, filed 12/14/11, effective 1/14/12)

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

~~(1) ((Schedule the matter for a hearing (adjudicative proceeding); or~~

~~(2) Issue an order; or~~

~~(3))~~ Direct the executive director to issue an alternative response 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.

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

WAC 390-37-140 Brief enforcement hearings (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 violations appear to be relatively minor in nature, and a penalty no greater than \$ ~~((500))~~ 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~~((τ))~~i
 - (b) Failure to report or accurately report campaign contributions or expenditures or funds spent in lobbying~~((τ))~~i
 - (c) Use of public office facilities in election campaigns when the value of public funds expended was minimal~~((τ))~~i
 - (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 03-22-065, filed 11/4/03, effective 12/5/03)

WAC 390-37-142 Brief enforcement hearing (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 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 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 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 \$~~((500))~~ 1,000, the presiding officer shall immediately adjourn the hearing and direct the matter be scheduled for an adjudicative proceeding by the full commission.

~~((4))~~ (6) At the time any unfavorable action is taken, within ten business days the presiding officer shall serve upon each party a written statement describing the violation, the reasons for the decision, the penalty imposed, and their right to request review by the commission. The executive director is authorized to sign the decision on behalf of the presiding officer.

~~((5))~~ (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 03-22-065, filed 11/4/03, effective 12/5/03)

WAC 390-37-155 Electronic filing brief enforcement hearing penalty schedule.

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to electronically file by date required.	\$ ((250)) <u>350</u>	\$ ((350)) <u>650</u>	\$ ((500)) <u>1,000</u>	Full commission consideration

Provisos:

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

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes ~~((five hundred))~~ one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to ~~((five hundred))~~ one thousand dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

WAC 390-37-160 Statement of financial affairs (F-1) penalty schedule.

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file report by date of enforcement hearing.	\$((150)) <u>250</u>	\$((300)) <u>500</u>	\$((500)) <u>1,000</u>	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$((100)) <u>150</u>	\$((200)) <u>300</u>	\$((400)) <u>600</u>	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$((0-\$100)) <u>0 - \$150</u>	\$((100-\$200)) <u>150 - \$300</u>	\$((200-\$400)) <u>300 - \$600</u>	Full commission consideration

Provisos:

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

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes ((~~five hundred~~)) one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to ((~~five hundred~~)) one thousand dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commission for an enforcement action when the person:

(a) Was found in violation during a previous reporting period((~~7~~))i

(b) The violation remains in effect following any appeals((~~7~~))i 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.

WAC 390-37-165 Candidate registration statement (C-1)/candidate statement of financial affairs (F-1) penalty schedule.

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file F-1 and/or C-1 by date of enforcement hearing.	\$(450) <u>250</u> per report	\$(300) <u>500</u> per report, up to \$(500) <u>1,000</u>	Full commission consideration	Full commission consideration
Filed reports after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$(400) <u>150</u> per report	\$(200) <u>300</u> per report	\$(400) <u>600</u> per report, up to <u>\$1,000</u>	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$(0-\$100) <u>0 - \$150</u> per report	\$(100-\$200) <u>150 - \$300</u> per report	\$(200-\$400) <u>300 - \$600</u> per report, up to <u>\$1,000</u>	Full commission consideration

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration including, but not limited to, payment of the nonsuspended portion of the penalty within five business days of the date of entry of the order in that case.

(3) The presiding officer may direct a matter to the full commission if the officer believes (~~five hundred~~) one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to (~~five hundred~~) one thousand dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commission for an enforcement action when the person:

(a) Was found in violation during a previous reporting period(~~(7)~~);

(b) The violation remains in effect following any appeals(~~(7)~~); 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.

WAC 390-37-170 Lobbyist monthly expense report (L-2) penalty schedule.

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file report by date of enforcement hearing.	\$ ((150)) <u>250</u>	\$ ((300)) <u>500</u>	\$ ((500)) <u>1,000</u>	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$ ((100)) <u>150</u>	\$ ((200)) <u>300</u>	\$ ((400)) <u>600</u>	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$ ((0-\$100)) <u>0 - \$150</u>	\$ ((100-\$200)) <u>0 - \$300</u>	\$ ((200-\$400)) <u>300 - \$600</u>	Full commission consideration

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant 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 entry of the order in that case. Except in rare circumstances, the nonsuspended portion of the penalty will not be less than the original settlement offer.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes ~~((five hundred))~~ one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to ~~((five hundred))~~ one thousand dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commission for an enforcement action when the person:

(a) Was found in violation during a previous reporting period ~~((τ))~~ i

(b) The violation remains in effect following any appeals ~~((τ))~~ i 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.

WAC 390-37-175 Lobbyist employer report (L-3) penalty schedule.

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file report by date of enforcement hearing.	\$ ((150)) <u>250</u>	\$ ((300)) <u>500</u>	\$ ((500)) <u>1,000</u>	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$ ((100)) <u>150</u>	\$ ((200)) <u>300</u>	\$ ((400)) <u>600</u>	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$ ((0-\$100)) <u>0 - \$150</u>	\$ ((100-\$200)) <u>150 - \$300</u>	\$ ((200-\$400)) <u>300 - \$600</u>	Full commission consideration

Provisos:

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

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes (~~five hundred~~) one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to (~~five hundred~~) one thousand dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commission for an enforcement action when the person:

(a) Was found in violation during a previous reporting period(~~(τ))~~i

(b) The violation remains in effect following any appeals(~~(τ))~~i 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.

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 violation;

(b) Shall assess a penalty for a second 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 violations of the same rule.

(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 (~~on-going~~) 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 respondent's organization, or size of campaign~~) 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 (~~anyone else benefitted~~) 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 staff or equipment error, including technical problems at the agency preventing or delaying electronic filing;

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

(1) 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);

~~(1)~~ (m) Whether the respondent is a first-time filer;

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

~~(n)~~ (o) Penalties imposed in factually similar cases; and ~~(7~~

~~o)~~ (p) Other factors relevant to a particular case.

(4) The commission, and the presiding officer in brief adjudicative proceedings, may consider the factors in ~~(1) through (3)~~ subsections (1) through (3) of this section in determining whether to suspend a portion 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 ~~(1) through (3)~~ subsections (1) through (3) of this section are factors that warrant directing a case to the full commission.

WAC 390-37-030 Enforcement procedures—Citizen complaints filed with the commission. (1) When a citizen complaint has been filed with the agency pursuant to WAC 390-37-040, neither the complainant nor any other person shall have special standing to participate or intervene in the investigation or consideration of the complaint by the commission. 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 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.

(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).

WAC 390-32-030 Complaint(s) publication—Fair Campaign Practices Code—Alternative to investigation or adjudicative proceeding.

(1) Written and signed complaints alleging a violation of one or more specific provisions of (~~the Fair Campaign Practices Code for candidates and political committees (WAC 390-32-010)~~) WAC 390-32-010. The Fair Campaign Practices Code may be submitted to the (~~public disclosure~~) commission by any person.

~~((2) Upon)~~ (a) Subject to the limitations in subsection (4) of this section, upon receipt of a complaint under subsection (1) of this section, the executive director shall forward a copy of the complaint to the (~~complainee~~) respondent within twenty-four hours, accompanied by a request for a response to the complaint returned within five days from the date of mailing.

~~((3))~~ (b) Upon receipt of (~~the complainee's~~) any response, the executive director shall forward a copy of the response to the complainant. A copy of the complaint and the response shall be sent to news media at the expiration of the five days for response. The complaint and the response shall be available at the commission office for public inspection and copying. If (~~the complainee does not respond~~) no response is received within five days, the complaint shall be made public without a response.

(c) The commission will not issue comments or opinions about complaints or responses received under this subsection.

(2) As provided by WAC 390-37-055, and considering the factors set forth in WAC 390-37-056, the executive director may authorize the processing of a complaint alleging violations of chapter 42.17A RCW or Title 390 WAC according to the complaint publication process provided in this section.

(a) Subject to the limitations in subsection (4) of this section, upon receipt of a complaint authorized by the executive director for processing under this subsection, the executive director shall forward a copy of the complaint to the respondent, accompanied by a request for a response to the complaint to be returned within five days from the date of mailing.

(b) Complaints authorized by the executive director for processing under this subsection shall be forwarded to the respondent within ten business days of receipt, or eight days prior to the date that ballots must be available under RCW 29A.40.070(1), whichever is earlier.

(c) Upon receipt of any response, the executive director shall forward a copy of the response to the complainant. A copy of the complaint and the response shall be sent to news media at the expiration of the five days for response. The complaint and the response shall be available at the commission office for public inspection and copying. If no response is received within five days, the complaint shall be made public without a response.

(d) Except as provided under (a) or (b) of this subsection, the publication of complaints or responses under this subsection shall constitute the final disposition of complaints authorized by the executive director for processing under this section.

(3) Following the processing of a complaint under subsection (2) of this section, the executive director shall review the complaint and any response received. Whenever a complaint and response indicate that

a material violation of chapter 42.17A RCW may have occurred and/or the respondent may not be in substantial compliance with the relevant statutes and rules, considering the factors set forth in WAC 390-37-056, the executive director may:

(a) Dispose of the complaint through an additional alternative response as provided in WAC 390-37-055; or

(b) Direct a formal investigation be conducted.

(4) The commission will make no attempt to secure a reply to and will make no public release of complaints received within eight days of ~~((an election))~~ the date that ballots must be mailed to voters under RCW 29A.40.070(1).

~~(5) ((The commission will not issue comments or opinions about complaints or responses.~~

~~(6) In the absence of any contrary intention as expressed by the complainant,))~~ The filing of a complaint with the commission under this section or any provision of chapter 390-37 WAC constitutes implied consent to have the complainant's identity disclosed.