



## PUBLIC DISCLOSURE COMMISSION

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To: Members, Washington State Public Disclosure Commission  
From: Lori Anderson, Communications & Training Officer  
Date: April 17, 2014  
Re: Rule Making – March 27, 2014 Commission Meeting  
Converting Interpretive Statements to Rules – F-1 Reporting Modifications

### **AGENDA ITEM**

Continuing with converting long-standing interpretive statements to rules, staff is proposing the Commission next consider these four interpretations regarding personal financial affairs reporting modifications:

- Interpretation 02-03 (lawyers and law firms);
- Interpretation 02-04 (judges & judicial candidates);
- Interpretation 02-05 (motor vehicle dealers); and
- Interpretation 02-06 (applicant's spouse who has a disclosure obligation)

### **BACKGROUND**

The Commission is charged with ensuring that certain candidates and elected officials disclose personal financial information at regular intervals. This disclosure is accomplished through filing personal financial affairs statements (PDC Form F-1). The Commission may modify or suspend any portion of the disclosure requirement if it finds that “literal application” of the chapter “works a manifestly unreasonable hardship” and that the suspension or modification of the reporting requirement will not frustrate the purposes of RCW 42.17A. The Commission’s authority to suspend or modify reporting requirements is set out at RCW 42.17A.120(1), which also mandates the Commission adopt rules governing the related proceedings. The Commission has done this in Chapter 390-28 WAC Hardship Exemptions.

#### ➤ WAC 390-28-100, Reporting modifications – Possible qualifications – Statement of financial affairs.

The current [rule](#) relating to F-1 reporting modifications provides that the Commission will consider specified circumstances as justification for a reporting modification, if in the public interest, to exempt the applicant from disclosing the following information:

- financial interests in banks, savings accounts, insurance policies;
- income and ownership interests;
- immediate family members’ interests;
- personal residence – real property; and
- other situations where disclosure would create a hardship and the circumstances do not indicate any actual or apparent conflict with the applicant’s official duties, such as when an ownership interest is held through a separate property agreement or other legally recognized separate status.

WAC 390-28-100 also references the subject interpretations.

➤ Interpretations.

At various times, the Commission has reviewed reporting modification applications to look for frequent, common requests by F-1 filers. The Commission then established protocols it would follow when considering requests for the same type of modification in the future. In 2002, the Commission formalized those protocols by adopting the following interpretations:

- **Requests for Modification of the Requirements to Report Information on the Personal Financial Affairs Statement (F-1) For Lawyers and Law Firms** (when applicant is an incumbent or candidate and acts alone or as part of a governing body, board or commission), [Interpretation 02-03](#). Through this interpretation, the Commission has stated that it will consider allowing an applicant to satisfy the F-1 disclosure requirements by reporting:
  - (1) Names of reportable business clients<sup>1</sup> for whom the applicant has done legal work;
  - (2) Other reportable business clients of the firm whose interests are significantly affected by the applicant's actions as an elected/appointed official and known by the applicant;
  - (3) Names of reportable business customers appearing in Martindale Hubbell, promotional materials, and, upon the Commission's determination that disclosure does not create an undue hardship, reportable business clients whose names would be found in public forums, such as court files, public records, and open meeting documents; and
  - (4) Governmental clients that have done business with the firm.

The interpretation also explains that under state and federal case law, the name of a client does not fall within the type of information ordinarily protected by the attorney-client privilege unless there is a "strong probability" that the disclosure would convey the substance of a confidential communication between client and attorney.

- **Requests for Modification of the Requirements to Report Information on the Personal Financial Affairs Statement (F-1) For Judges and Judicial Candidates**, [Interpretation 02-04](#).

Through this interpretation, the Commission has explained how it will handle judges' and judicial candidates' requests involving home addresses and current or former law firms.

Home address: The Commission may exempt the disclosure of a home address upon a judge certifying there is a threat to the judge or the judge's family. Prospective

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<sup>1</sup>"Reportable" clients are those who pay compensation of \$10,000 or more. "Business" clients refers to commercial clients who are not individuals or government agencies.

non-disclosure of an address may also be considered, provided the applicant complies with all other real estate disclosure requirements – assessed value, creditor information, etc.

Judge's former law firm: When a judge certifies that he or she is no longer able to access or has been denied access to a former law firm's client information and the firm is part of the judge's disclosure obligation, the Commission will consider allowing the judge to disclose only information of which he or she is aware. The interpretation also sets out a rebuttable presumption of situations where an applicant will be presumed to know the identity of at least some reportable clients of a former law firm.

This interpretation cross-references the

- interpretation for lawyers and law firms summarized above as it applies to non-incumbent judicial candidates, and
- interpretation for filers whose spouse creates a reporting obligation as it applies to a judicial candidate or judge.

- **Requests for Modification of the Requirements to Report Information on the Personal Financial Affairs Statement (F-1) For Motor Vehicle Dealers, Interpretation 02-05.** The interpretation provides that reporting obligations created by ownership interest in a vehicle dealership may be satisfied by disclosure of:
  - a) All purchases and leases of vehicles, and purchases of parts and services by [the agency or jurisdiction in which the applicant seeks or holds office] to the dealership;
  - b) Other business customers and government entities that purchased or leased 10 or more vehicles from the dealership;
  - c) Business customers who paid more than \$20,000 for the purchase of parts and/or service from the dealership; and
  - d) All other governmental entities that paid in excess of \$10,000 for the purchase of parts and/or service from the dealership.
- **Requests for Modification of the Requirements to Report Information on the Personal Financial Affairs Statement (F-1) For Applicants Whose Spouse or Registered Domestic Partner Creates a Reporting Obligation for the Applicant, Interpretation 02-06.** This interpretation acknowledges that an F-1 filer may not have direct knowledge or be able to ascertain the information required to be reported for entities with which a spouse or domestic partner is affiliated or has an ownership interest. It also presumes that the couple has not entered into a bona fide separate property agreement, which may require a more particularized analysis when considering a reporting modification request. The interpretation also provides that the Commission may consider allowing the F-1 filer/applicant to satisfy a disclosure requirement stemming from a spouse's or domestic partner's involvement with a particular entity by disclosing for the reporting period:
  1. All payments made by [the agency or jurisdiction in which the applicant seeks or holds office] to the entity;
  2. The reportable business and other governmental customers or clients of the spouse/domestic partner/entity of which the applicant is aware; and

3. The reportable business and other governmental customers or clients whose identities are known to the applicant and whose interests are significantly affected by [the agency or jurisdiction in which the applicant seeks or holds office] not otherwise disclosed under 1 and 2.

The adoption of these interpretations has assisted the Commission in rendering consistent decisions for similar requests. The interpretations have also helped inform applicants of the Commission's standards. Interpretations, however, are advisory only. Converting these long-standing interpretations into rules will better advise the public of the Commission's opinions, approaches, and likely courses of action, as encouraged by the Administrative Procedures Act. RCW 34.05.230.

### **PROPOSED AMENDMENTS**

The interpretations regarding disclosure of business and other affiliated entities are proposed to be inserted into WAC 390-28-100 without significant changes.

The rule currently includes a subsection describing that reporting modifications to allow for non-disclosure of a residential address or other means of identifying a residence may be granted when a filer or an immediate family member has received threats. That subsection is proposed to be modified to include the language from Interpretation 02-04.

#### **Commission Action:**

Staff is requesting the Commission approve the proposed draft language to amend WAC 390-28-100. Staff will file a notice of hearing (CR-102) with the code reviser after the draft language is approved. The hearing to consider adopting the amendment would be scheduled for the July 2014 meeting or later.

Attachments: PDC Interpretations 02-03, 02-04, 02-05 and 02-06  
WAC 390-28-100  
Proposed draft amendments to WAC 390-28-100

## PDC Interpretation

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|----------------|---|--------------|-----------------|
| APPROVAL DATE: | January 28, 2003;<br>Amended April 9, 2009;<br>Amended March 22, 2012   | NUMBER:      | 02-03           |
| STATUS:        | Effective January 28, 2003  | SUPERSEDES:  | Prior Protocols |
| REFERENCES:    | <a href="#">RCW 42.17A.700</a><br><a href="#">RCW 42.17A.710</a><br><a href="#">RCW 42.17A.120</a><br><a href="#">WAC 390-24</a><br><a href="#">WAC 390-28</a><br><a href="#">"F-1" Form (Personal Financial Affairs Statement)</a><br><a href="#">PDC Declaratory Order No. 7</a><br><a href="#">PDC Interpretation 91-01</a><br><a href="#">"Personal Financial Affairs Statement – Instruction Manual and Blank Forms"</a> | APPROVED BY: | The Commission  |
| [Former:       | RCW 42.17.240, 42.17.241,<br>42.17.370(10)]   |              |                 |

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### **Requests for Modification of the Requirements to Report Information on the Personal Financial Affairs Statement (F-1) For Lawyers and Law Firms**

#### **Background**

The Public Disclosure Commission enforces the election and campaign reporting requirements in chapter [42.17A](#) RCW. The statutes require certain candidates and public officials to report their financial affairs on a "Personal Financial Affairs Statement" (an "F-1" report or form). [RCW 42.17A.700](#), [RCW 42.17A.710](#). The Commission is authorized to allow modifications or suspensions of these reporting requirements under [RCW 42.17A.120](#) in a particular case when it finds that "literal application" of the chapter "works a manifestly unreasonable hardship" and that the suspension or modification of the reporting requirements "will not frustrate the purposes of the chapter." The Commission shall suspend or modify the reporting requirement or

requirements only to the extent necessary to substantially relieve such hardship, and only upon clear and convincing proof of such claim.

The PDC has adopted rules to further identify reporting modification/suspension procedures. Those rules are in [WAC 390-28](#). The procedures include making the request in writing, and requesting a hearing. The requester is not required to attend the hearing in person and may instead submit a written, sworn statement. The possible qualifications for obtaining a reporting modification with respect to an F-1 report are identified in [WAC 390-28-100](#).

In addition, due to the volume and similarity of modification or suspension requests concerning F-1 reports from certain professions, the Commission has also developed this interpretation regarding reporting by lawyers and law firms. Judicial candidates should also review [PDC Interpretation 02-04](#).

## **PDC Interpretation**

### **Requests for Modification of the Requirements Lawyers and Law Firms (When Applicant is an Incumbent Or Candidate and Acts Alone or as Part of a Governing Body, Board or Commission)**

The Commission will consider using the following language when the applicant must report the activities of a law firm because of the relationship to the firm by the applicant.

The Commission will consider using the following language when the applicant is an **incumbent** (holds office or the position) or is a **candidate** and either acts or will act alone, or as part of a governing body, board, or commission.

The applicant may satisfy the reporting requirements of [RCW 42.17A.710\(1\)\(g\)\(ii\)](#) by identifying for the appropriate reporting period each of the four items listed below:

1. The names of the reportable<sup>1</sup> business clients for whom the applicant has done legal work<sup>2</sup>.

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<sup>1</sup> Reportable business clients are nonindividuals providing compensation of \$10,000 or more during the reporting period.

<sup>2</sup> Ordinarily, the identity of a client does not fall within the purview of the information protected by the attorney-client privilege unless there is a "strong probability" that the disclosure would convey the substance of a confidential communication between client and attorney. [Splash Design, Inc. v. Lee](#), 104 Wn.App. 38, 14 P.3d 879 (2001) (describing Rule of Professional Conduct 1.6 and citing to [Dietz v. Doe](#), 131 Wn.2d 835, 935 P.2d 611 (1997)); Tegland, [Washington Practice](#), Vol. 5A, § 501.15 (1999); [United States v. Hunton & Williams](#), 952 F.Supp. 843 (D.C. 1997)(under federal law, absent special circumstances, identity of a client of a lawyer or law firm is not protected by attorney-client privilege); [C.K.](#)

2. Other reportable business clients of the law firm whose interests are significantly affected by the applicant's actions [in the applicant's official capacity as **(name of office or position held)**] or [whose actions will be affected by the applicant's actions should the applicant be elected to **(name of office sought)**] whose identities become known to the applicant or of which the applicant becomes aware by any means; **(If applicable, also list name of governing body, board or commission).**

3. The names of the reportable business clients of the law firm when the names are listed in Martindale Hubbell, the firm's publicity brochure(s), or the firm's resume, website, or similar promotional materials. In addition, unless the Commission has determined it creates an undue hardship for the applicant, the names of other reportable business clients of the firm when:

- (i) the identities are otherwise publicized or referenced in documents open for public inspection at the courts, in administrative hearings, or at other public agencies; or,
- (ii) the identities have been disclosed in documents made available for public inspection at open public meetings of public agencies; or,
- (iii) the identities have been made a matter of public knowledge in other similar public forums.

If the Commission determines that it is an undue hardship for the applicant to report all names otherwise publicly identified by the means listed in (i) through (iii), the Commission may determine the applicant must report those names of which the applicant is aware, or becomes aware, by any means.

4. All governmental clients that have done business with the law firm.<sup>3</sup>

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Liew v. Breen, 640 F.2d 1046 (9<sup>th</sup> Cir. 1981) (citing to California law for same proposition, and to J. Wigmore, Evidence § 2313).

<sup>3</sup> The names of governmental clients are matters of public knowledge in listings in Martindale Hubbell; the firm's publicity brochure(s), websites, or other promotional materials; or the firm's resume. The names of government clients are also matters of public knowledge in records that disclose that the firm is representing the client, including but not limited to documents reflecting payments of public funds from the governmental agency to the law firm; court filings; filings in administrative hearings; and in public records. See definition of public record at [RCW 42.17A.005](#) and [RCW 42.56.010\(2\)](#).

## PDC Interpretation

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|----------------|--|--------------|-----------------|
| APPROVAL DATE: | January 28, 2003;<br>Amended April 9, 2009   | NUMBER:      | 02-04           |
| STATUS:        | Effective January 28, 2003   | SUPERSEDES:  | Prior Protocols |
| REFERENCES:    | <a href="#">RCW 42.17.240</a><br><a href="#">RCW 42.17.241</a><br><a href="#">RCW 42.17.370(10)</a><br><a href="#">WAC 390-24</a><br><a href="#">WAC 390-28</a><br><a href="#">“F-1” Form (Personal Financial Affairs Statement)</a><br><a href="#">PDC Declaratory Order No. 7</a><br><a href="#">PDC Interpretation 91-01</a><br><a href="#">PDC Interpretation 02-03</a><br><a href="#">PDC Interpretation 02-06</a><br><a href="#">“Personal Financial Affairs Statement – Instruction Manual and Blank Forms”</a> | APPROVED BY: | The Commission  |

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### **Requests for Modification of the Requirements to Report Information on the Personal Financial Affairs Statement (F-1) For Judges and Judicial Candidates**

#### **Background**

The Public Disclosure Commission enforces the election and campaign reporting requirements in chapter 42.17 RCW. The statutes require certain candidates and public officials to report their financial affairs on a “Personal Financial Affairs Statement” (an “F-1” report or form). [RCW 42.17.240](#), [RCW 42.17.241](#). The Commission is authorized to allow modifications or suspensions of these reporting requirements under RCW [42.17.370\(10\)](#) when it finds that “literal application” of the chapter “works a manifestly unreasonable hardship” and that the suspension or modification of the reporting requirements “will not frustrate the purposes of the chapter.” The Commission shall suspend or modify the reporting requirement or requirements in a particular case only to

the extent necessary to substantially relieve such hardship, and only upon clear and convincing proof of such claim.

The PDC has adopted rules to further identify reporting modification/suspension procedures. Those rules are in [WAC 390-28](#). The procedures include making the request in writing, and requesting a hearing. The requester is not required to attend the hearing in person and may instead submit a written, sworn statement. The possible qualifications for obtaining a reporting modification with respect to an F-1 report are identified in [WAC 390-28-100](#).

In addition, due to the volume and similarity of modification or suspension requests concerning F-1 reports from certain professionals, the Commission has also developed interpretations that interpret the statute and rules with respect to those professions. This interpretation concerns judges and judicial candidates. With respect to financial affairs disclosures, this interpretation also recognizes that judges are subject to the Canons of Judicial Conduct, including the disqualification provisions of Canon 3(D). In addition, the Commission is advised that under Canon 3(D), judges should inform themselves about their personal and fiduciary economic interests, and make a reasonable effort to inform themselves about the personal economic interests of their spouse and minor children residing in their household.

### **PDC Interpretation**

## ***Requests for Modification of the Requirements to Report Information on the Personal Financial Affairs Statement (F-1) for Judges and Judicial Candidates***

### **A. Disclosure of Home Address**

A modification applicant who is a judge and who certifies there is a threat to the judge or his or her family may seek a reporting modification on his/her F-1 form seeking nondisclosure of the judge's home address.

- In that situation, the Commission will consider granting a modification to **permit prospective non-disclosure of the residential address on the F-1 form, so long as real property owned or its value (including but not limited to assessed value, creditor information, etc.) is otherwise sufficiently described, as directed by the Commission.**

This F-1 modification does not extend to other forms filed with or submitted to the PDC by the judge or other filers (including candidate campaigns or political committees), or to the Secretary of State, or county auditors.

### **B. Disclosure of Information Regarding a Judicial Candidate's Law Firm**

A non-incumbent judicial candidate who practiced law during the reporting period and who seeks a modification regarding reportable<sup>1</sup> business clients of the law firm on the F-1 form, should refer to [PDC Interpretation 02-03](#).

### **C. Disclosure of Information Regarding a Judge's Former Law Firm**

A modification applicant who is a judge may seek an F-1 reporting modification when he or she certifies that he or she is no longer able to access or has been denied access to reportable information from his or her former law firm, and information about reportable business customers and clients of that firm is otherwise required on the F-1 form because of the reporting period covered. This may occur, for example, when a newly-elected or appointed judge has practiced law during part of the reporting period, and served as a judge during part of the reporting period.

- In that situation, the Commission will consider granting a modification request which will **require the applicant to report required information of which he or she is aware**.

There is a rebuttable presumption that the applicant will have become aware of at least some of the reportable business clients of his or her former firm in various ways such as:

- the applicant will know the identities of his or her reportable former business clients,
- the applicant recalls the information of other reportable business clients of the firm, and
- the applicant is aware that the client names are listed in Martindale Hubbell, the firm's publicity brochure(s), or the firm's resume, website, or similar promotional materials of the firm.

In addition, a filer may otherwise have become aware of reportable business clients of his or her former law firm. For examples, review the F-1 filing manual.

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<sup>1</sup> Reportable business clients are nonindividuals providing compensation of \$10,000 or more during the reporting period.

**D. Disclosure of Information Where the Judicial Candidate's or Judge's Spouse or Registered Domestic Partner Creates a Reporting Obligation for the Applicant**

In some instances, a judge or judicial candidate filing an F-1 is required to report information about entities solely because his or her spouse or registered domestic partner<sup>2</sup> holds an ownership interest or is an officer or director of the entity. In these instances, the modification applicant may not have direct knowledge of the information that must be reported, or the ability to obtain the reportable information.

- In that situation, the Commission will consider granting an applicant seeking a modification **to require reporting information of which he or she is aware.** See [PDC Interpretation 02-06](#).

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<sup>2</sup> "Registered domestic partner" is defined at [RCW 26.60.020\(1\)](#). [See also WAC 390-05-222 \(Domestic Partner – Definition\)](#).

## PDC Interpretation

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|----------------|--|--------------|-----------------|
| APPROVAL DATE: | January 28, 2003<br>Amended February 26, 2010  | NUMBER:      | 02-05           |
| STATUS:        | Effective January 28, 2003   | SUPERSEDES:  | Prior Protocols |
| REFERENCES:    | RCW 42.17.240<br>RCW 42.17.241<br>RCW 42.17.370(10)<br>WAC 390-24<br>WAC 390-28<br>“F-1” Form (Personal Financial Affairs Statement)<br>PDC Declaratory Order No. 7<br>PDC Interpretation 91-01<br>“Personal Financial Affairs Statement – Instruction Manual and Blank Forms” | APPROVED BY: | The Commission  |

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### **Requests for Modification of the Requirements to Report Information on the Personal Financial Affairs Statement (F-1) For Motor Vehicle Dealers**

#### **Background**

The Public Disclosure Commission enforces the election and campaign reporting requirements in chapter 42.17 RCW. The statutes require certain candidates and public officials to report their financial affairs on a “Personal Financial Affairs Statement” (an “F-1” form). RCW 42.17.240, RCW 42.17.241. The Commission is authorized to allow modifications or suspensions of these reporting requirements under RCW 42.17.370(10) when it finds that “literal application” of the chapter “works a manifestly unreasonable hardship” and that the suspension or modification of the reporting requirements “will not frustrate the purposes of the chapter.” The Commission shall suspend or modify the reporting requirement or requirements only to the extent necessary to substantially relieve such hardship, and only upon clear and convincing proof of such claim.

The PDC has adopted rules to further identify reporting modification/suspension procedures. Those rules are in WAC 390-28. The procedures include making the request in writing, and requesting a hearing. The requester is not required to attend the hearing in person and may instead submit a written, sworn statement. The possible qualifications for obtaining a reporting modification with respect to an F-1 Form are identified in WAC 390-28-100.

In addition, due to the volume and similarity of modification or suspension requests concerning F-1 Forms from certain professions, the Commission has also developed a series of "protocols" that interpret the statute and rules with respect to those professions. The protocols enable easier consideration of such requests. Those protocols are now being provided in this single interpretation.

### **PDC Interpretation**

#### ***Motor Vehicle Dealers Protocol***

The following language is to be included when the applicant is required to report the activities of a vehicle dealership because the applicant held an office, directorship, general partnership or ownership interest in the dealership.

The following language is to be used whether the applicant is a candidate or incumbent, and whether he or she acts alone or as part of a governing body, board or commission.

1. The applicant may satisfy the reporting requirements of RCW 42.17.241(1)(g) by identifying for the appropriate reporting period:
  - (a) All purchases and leases of vehicles, and purchases of parts and services by **(the entity, agency, board or commission on which the applicant is seeking to serve or serves)** from **(name of dealership)**;
  - (b) Business customers and governmental entities other than **(the entity, agency, board or commission on which the applicant is seeking to serve or serves)** that purchased or leased ten (10) or more vehicles from **(name of dealership)**;
  - (c) Business customers who paid in excess of \$20,000 for the purchase of parts and/or service from **(name of dealership)**; and

- (d) All governmental entities other than **(the entity, agency, board or commission on which the applicant is seeking to serve or serves)** that paid in excess of \$10,000 for the purchase of parts and/or service from **(name of dealership)**.

## PDC Interpretation

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|----------------|---|--------------|----------------|
| APPROVAL DATE: | January 28, 2003 –<br>Amended May 27, 2003<br>Amended June 26, 2008;<br>Amended April 9, 2009<br>Amended February 26, 2012  | NUMBER:      | 02-06          |
| STATUS:        | Effective January 28, 2003  | SUPERSEDES:  | New            |
| REFERENCES:    | RCW 42.17A.700<br>RCW 42.17A.710<br>RCW 42.17A.120<br><a href="#">WAC 390-24</a><br><a href="#">WAC 390-28</a><br><a href="#">“F-1” Form (Personal Financial Affairs Statement)</a><br><a href="#">PDC Declaratory Order No. 7</a><br><a href="#">PDC Interpretation 91-01</a><br><a href="#">“Personal Financial Affairs Statement – Instruction Manual and Blank Forms”</a> | APPROVED BY: | The Commission |

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### **Requests for Modification of the Requirements to Report Information on the Personal Financial Affairs Statement (F-1) For Applicants Whose Spouse or Registered Domestic Partner Creates a Reporting Obligation for the Applicant**

#### **Background**

The Public Disclosure Commission enforces the election and campaign reporting requirements in chapter 42.17A RCW. The statutes require certain candidates and public officials to report their financial affairs on a “Personal Financial Affairs Statement” (an “F-1” report or form). RCW 42.17A.700 and 42.17A.710. The Commission is authorized to allow modifications or suspensions of these reporting requirements under RCW 42.17A.120 in a particular case when it finds that “literal application” of the chapter “works a manifestly unreasonable hardship” and that the suspension or modification of the reporting requirements “will not frustrate the purposes of the

chapter.” The Commission shall suspend or modify the reporting requirement or requirements only to the extent necessary to substantially relieve such hardship, and only upon clear and convincing proof of such claim.

The PDC has adopted rules to further identify reporting modification/suspension procedures. Those rules are in [WAC 390-28](#). The procedures include making the request in writing, and requesting a hearing. The requester is not required to attend the hearing in person and may instead submit a written, sworn statement. The possible qualifications for obtaining a reporting modification with respect to an F-1 report are identified in [WAC 390-28-100](#).

In addition, due to the volume and similarity of modification or suspension requests concerning F-1 reports, the Commission has also developed interpretations to enable efficient consideration of such requests.

In some instances, a person filing an F-1 form is required to report information about entities solely because his or her spouse or registered domestic partner<sup>1</sup> holds an ownership interest or is an officer or director of the entity. In these instances, the applicant may not have direct knowledge of the information that must be reported, or the ability to obtain the reportable information. For these reasons, an applicant would report the information of which he or she is aware. This interpretation assumes an applicant does not have a bona fide separate property agreement or other bona fide separate status, which may be the basis for a modification requiring a more particularized analysis as to the applicant’s source(s) of income. [See WAC 390-28-100](#).

With respect to reporting a spouse’s or domestic partner’s clients or customers, there is a rebuttable presumption that the applicant will make efforts to become aware of at least some of the names of reportable<sup>2</sup> business clients or customers by checking/reviewing the spouse’s/domestic partner’s clients or customers:

- in publicity brochures or similar promotional materials of the firm or company; and,
- on the applicant’s firm’s or company’s website, (and for law firms, listings in Martindale Hubbell or similar publications); and,
- other means that make the applicant aware of a spouse’s or domestic partner’s *primary or significant* clients or customers whose interests are significantly affected by the applicant’s position or the entity in which the applicant seeks or holds office.

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<sup>1</sup> “Registered domestic partner” is defined at [RCW 26.60.020\(1\)](#). See also [WAC 390-05-222](#) (Domestic Partner – Definition).

<sup>2</sup> Reportable business clients or customers are nonindividuals providing compensation of \$10,000 or more during the reporting period.

In addition, a filer may otherwise become aware of a spouse's/domestic partner's reportable information in other ways. For examples, review the F-1 filing manual.

In addition, the Commission is aware that for judges subject to the Canons of Judicial Conduct, Canon 3(D) provides that judges should inform themselves about their personal and fiduciary economic interests, and make a reasonable effort to inform themselves about the personal economic interests of their spouse and minor children residing in their household.

To assist in the analysis, this interpretation is being provided for modifications requested by applicants who incur a reporting obligation because of the activities of his or her spouse or registered domestic partner.

### **PDC Interpretation**

#### ***A. Applicants Required to Report for Entities Because a Spouse or Registered Domestic Partner Held a Position or Ownership Interest in the Entity (Except as Provided In "B" Below)***

The Commission will consider using the following language when the applicant is required to report the activities of an entity solely because the applicant's spouse or registered domestic partner held an office, directorship, general partnership or ownership interest in the entity.

The Commission will consider using this language whether the applicant is a candidate or incumbent, and whether he or she acts alone or as part of a governing body, board or commission.

The applicant may satisfy the reporting requirements of RCW 42.17A.710(g)(ii) by identifying for the appropriate reporting period as follows:

1. The applicant shall report all payments made by **(the entity in which the applicant seeks or holds office)** to **(name of entity in which spouse or registered domestic partner had an interest during the reporting period)**.
2. The applicant shall report the reportable business and other governmental customers or clients of **(spouse or registered domestic partner)** and **(name of entity in which spouse or registered domestic partner had an interest during the reporting period)** of which the applicant is aware.
3. The applicant shall report the reportable business and other governmental customers or clients of **(name of entity in which spouse or registered**

**domestic partner had an interest during the reporting period)**, whose identities are known to the applicant and whose interests are significantly affected by **(the entity in which the applicant seeks or holds office)**, to the extent not otherwise disclosed in (1) and (2).

**B. *Applicants Whose Spouse or Registered Domestic Partner is a Motor Vehicle Dealer***

The Commission will consider using the following language when the applicant is required to report the activities of a vehicle dealership because the applicant's spouse or registered domestic partner held an office, directorship, general partnership or ownership interest in a motor vehicle dealership.

The Commission will consider using this language whether the applicant is a candidate or incumbent, and whether he or she acts alone or as part of a governing body, board or commission.

The applicant may satisfy the reporting requirements of RCW 42.17A.710(g)(ii) by identifying for the appropriate reporting period:

1. All purchases and leases of vehicles, and purchases of parts and services by **(the entity, agency, board or commission on which the applicant is seeking to serve or serves)** from **(name of dealership)**; (It is the responsibility of the applicant to obtain this information, either from the motor vehicle dealership or from the entity, agency, board or commission on which the applicant is seeking to serve or serves.)
2. Business customers and governmental entities other than **(the entity, agency, board or commission on which the applicant is seeking to serve or serves)** that purchased or leased ten (10) or more vehicles from **(name of dealership)** of which the applicant is aware;
3. Business customers who paid in excess of \$20,000 for the purchase of parts and/or service from **(name of dealership)** of which the applicant is aware; and
4. All governmental entities other than **(the entity, agency, board or commission on which the applicant is seeking to serve or serves)** that paid in excess of **(the reportable threshold amount)** for the purchase of parts and/or service from **(name of dealership)** of which the applicant is aware.

**WAC 390-28-100****Reporting modifications—Possible qualifications—Statement of financial affairs.**

(1) One or more of the following may be considered by the commission as possible qualifications for a reporting modification with respect to the statement of financial affairs, when it is in the public interest:

(a) **Banks, savings accounts, insurance policies - Financial interests.** A candidate or official may be exempted from reporting any financial interest, otherwise required to be reported by RCW 42.17A.710 (1)(b) if:

(i) The financial institution or other entity in which the candidate or official held an interest does not engage in business in the state of Washington, or is not regulated in whole or in part by the office sought or held by such candidate or official;

(ii) Such reporting would present a manifestly unreasonable hardship to the candidate or official; and

(iii) The interest would present no actual or potential conflict with the proper performance of the duties of the office sought or held.

(b) **Income and ownership interests.** A candidate or official may be exempted from reporting the information otherwise required by RCW 42.17A.710 (1)(f) and (g), if:

(i) Public disclosure would violate any legally recognized confidential relationship;

(ii) The information does not relate to a business entity which would be subject to the regulatory authority of the office sought or held by the candidate or official in whole or in part;

(iii) Such reporting would present a manifestly unreasonable hardship to the candidate or official including but not limited to adversely affecting the competitive position of an entity in which the filer had an interest of ten percent or more as described in RCW 42.17A.120; and

(iv) The interest in question would present no actual or potential conflict with the performance of the duties of the office sought or held.

(c) **Immediate family members' interests.** A candidate or official may be exempted from reporting the information otherwise required by RCW 42.17A.710 for members of the immediate family of a candidate or official, if:

(i) Such information relates to a financial interest held by such member under a bona fide separate property agreement, or other bona fide separate status; and, such financial interest does not constitute a present or prospective source of income to such candidate or official or to any other person who is dependent upon such candidate or official for support in whole or in part; or

(ii) Reporting the name of an entity in which the immediate family holds an interest of ten percent or more would be likely to adversely affect the competitive position of the entity, under RCW 42.17A.120.

(d) **Personal residence - Real property.** Regarding reporting the information otherwise required by RCW 42.17A.710 (1)(h) through (k):

(i) Under WAC 390-24-200, the filer shall list the street address of each parcel, the assessor's parcel number, the abbreviated legal description appearing on property tax statements, or the complete legal description. Each property description shall be followed by the name of the county in which the property is located.

(ii) No modification will be necessary if the filer describes the real property using one of the alternatives in WAC 390-24-200, plus the name of the county.

(iii) A modification will be required if the filer seeks some other means to describe reportable real property including the personal residence of the filer. The commission may consider a modification, for example, when the filer or his or her immediate family member has received a threat, has a no contact order, or presents a similar personal safety situation.

(e) **Other.** A candidate or official may be exempted from reporting information otherwise required under RCW 42.17A.710 which would constitute a manifestly unreasonable hardship in a particular case, when the circumstances presented would not indicate any actual or potential conflict with the proper performance of the duties of the office sought or held. Examples of members of professions often seeking modifications, and examples of other frequent situations that may result in modification requests, are described in commission interpretive statements.

(2) "Bona fide separate property agreement" means an agreement or court order describing separate property in a valid:

- (a) Prenuptial agreement;
- (b) Separate property contract under chapter 26.09 RCW;
- (c) Separate property court decree under chapter 26.09 RCW;
- (d) Domestic partnership agreement under chapter 26.60 RCW;
- (e) Domestic partnership agreement as part of a notice of termination under chapter 26.60 RCW; or
- (f) Postnuptial agreement.

(3) "Other bona fide separate status" means a valid written agreement or court decree recognizing the separate status of the parties under state law, including their individual property that is separate under state law.

[Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-28-100, filed 1/4/12, effective 2/4/12.  
Statutory Authority: RCW 42.17.370(1). WSR 09-20-081, § 390-28-100, filed 10/6/09, effective 11/6/09;  
WSR 85-22-029 (Order 85-04), § 390-28-100, filed 10/31/85; WSR 80-02-106 (Order 80-02), § 390-28-100, filed 1/24/80; Order 64, § 390-28-100, filed 11/25/75; Order 62, § 390-28-100, filed 8/26/75; Order 24, § 390-28-100, filed 2/21/74.]

**WAC 390-28-100 Reporting modifications—Possible qualifications—**

**Standards—Statement of financial affairs.** (1) One or more of the following may be considered by the commission as possible qualifications for a reporting modification with respect to the statement of financial affairs, when it is in the public interest:

(a) **Banks, savings accounts, insurance policies - Financial interests.** (~~(A candidate or official)~~) An applicant may be exempted from reporting any financial interest, otherwise required to be reported by RCW 42.17A.710 (1) (b) if:

(i) The financial institution or other entity in which the (~~candidate or official~~) applicant held an interest does not engage in business in the state of Washington, or is not regulated in whole or in part by the office sought or held by (~~such candidate or official~~) the applicant;

(ii) Such reporting would present a manifestly unreasonable hardship to the (~~candidate or official~~) applicant; and

(iii) The interest would present no actual or potential conflict with the proper performance of the duties of the office sought or held.

(b) **Income and ownership interests.** (~~(A candidate or official)~~) An applicant may be exempted from reporting the information otherwise required by RCW 42.17A.710 (1) (f) and (g), if:

(i) Public disclosure would violate any legally recognized confidential relationship;

(ii) The information does not relate to a business entity which would be subject to the regulatory authority of the office sought or held by the (~~candidate or official~~) applicant in whole or in part;

(iii) Such reporting would present a manifestly unreasonable hardship to the (~~candidate or official~~) applicant including but not limited to adversely affecting the competitive position of an entity in which the (~~filer~~) applicant had an interest of ten percent or more as described in RCW 42.17A.120; and

(iv) The interest in question would present no actual or potential conflict with the performance of the duties of the office sought or held.

(c) **Immediate family members' interests.** (~~(A candidate or official)~~) An applicant may be exempted from reporting the information otherwise required by RCW 42.17A.710 for members of the applicant's immediate family (~~(of a candidate or official)~~), if:

(i) Such information relates to a financial interest held by such member under a bona fide separate property agreement, or other bona fide separate status; and, such financial interest ~~((does))~~ is not ~~((constitute))~~ a present or prospective source of income to ~~((such candidate or official))~~ the applicant or to any other person who is dependent upon ~~((such candidate or official))~~ the applicant for support in whole or in part; or

(ii) Reporting the name of an entity in which the immediate family holds an interest of ten percent or more would be likely to adversely affect the competitive position of the entity, under RCW 42.17A.120.

(d) **Personal residence - Real property.** Regarding reporting the information otherwise required by RCW 42.17A.710 (1) (h) through (k):

(i) Under WAC 390-24-200, the filer shall list the street address of each parcel, the assessor's parcel number, the abbreviated legal description appearing on property tax statements, or the complete legal description. Each property description shall be followed by the name of the county in which the property is located.

(ii) No modification will be necessary if the filer describes the real property using one of the alternatives in WAC 390-24-200, plus the name of the county.

(iii) A modification will be required if the filer seeks some other means to describe reportable real property including the personal residence of the filer. The commission may consider a modification, for example, when the filer or his or her immediate family member has received a threat, has a no contact order, or presents a similar personal safety ~~((situation))~~ concern.

A prospective modification to allow non-disclosure of a residential address may be granted when the applicant or an immediate family member has been issued a no contact order or similar means of restraint.

(e) **Other.** ~~((A candidate or official))~~ An applicant may be exempted from reporting information otherwise required under RCW 42.17A.710 which would constitute a manifestly unreasonable hardship in a particular case, when the circumstances presented would not indicate any actual or potential conflict with the proper performance of the duties of the office sought or held. ~~((Examples of members of professions of ten seeking modifications, and examples of other frequent situations that may result in modification requests, are described in commission interpretive statements.))~~ Examples of other common requests will be considered as follows:

(i) Lawyers and law firms (when applicant is an incumbent or candidate and acts alone or as part of a governing body, board, or commission). An applicant may be allowed to satisfy the reporting requirements of RCW 42.17A.710(1)(g)(ii) and WAC 390-24-020 by disclosing reportable clients from whom compensation has been paid in excess of the reporting threshold as follows: (1) the names of the business clients for whom the applicant has done legal work, (2) other clients of the law firm whose interests are significantly affected by the applicant's actions as an elected or appointed official or whose actions will be affected by the applicant's action should the applicant be elected whose identities become known to the applicant through any means, (3) the names of the clients of the law firm who are listed in Martindale Hubbell, the firm's resume, website, or similar promotional materials, and (4) governmental clients that have done business with the law firm. An applicant may also be required to disclose all business customers from whom compensation in excess of the reporting threshold has been received whose identifies are publicized or referenced in documents open for public inspection at the courts, in administrative hearings, at proceedings conducted by public agencies, or are a matter of public knowledge in other similar public forums. Al-

ternatively, the Commission may require an applicant to report only those publicly identifiable customers of which the applicant is aware.

(ii) **Judges' and former law firms.** An applicant may be allowed to satisfy the reporting requirements of RCW 42.17A.710(1)(g)(ii) and WAC 390-24-020 by disclosing any required information of which the applicant is aware, when the applicant certifies he or she is no longer able to access or has been denied access to the former law firm's client information.

The commission may apply (e)(i) of this subsection when the applicant is a non-incumbent judicial candidate who practiced law during the reporting period and who seeks a modification regarding reportable business clients of the law firm.

(iii) **Motor Vehicle Dealers.** An applicant may satisfy the reporting requirements of RCW 42.17A.710(1)(g) and WAC 390-24-020 by disclosing (1) all purchases and leases of vehicles, and purchases of parts and services from the dealership, by the agency or jurisdiction in which the applicant seeks or holds office, (2) other business and governmental entities that purchased or leased 10 or more vehicles from the dealership, (3) business customers who paid in excess of \$20,000 for the purchase of parts and/or service from the dealership, and (4) any other governmental entity that paid the dealership in ex-

cess of the disclosure threshold established under RCW 42.17A.710(1)(g)(ii) for the purchase of parts and/or service.

(iv) Applicants whose spouse or registered domestic partner creates a reporting obligation for the applicant. When an applicant is required to report the activities of an entity solely because the applicant's spouse or registered domestic partner held an office, directorship, general partnership or ownership interest in the entity and the applicant does not have direct knowledge of the information that must be reported, the applicant may be allowed to satisfy the disclosure requirements of RCW 42.17A.710(1)(g)(ii) and WAC 390-24-020 by disclosing reportable customers from whom compensation in excess of the disclosure threshold established under RCW 42.17A.710(1)(g)(ii) has been received as follows: (1) all payments made by the agency or jurisdiction in which the applicant seeks or holds office to the entity, (2) the business and other governmental customers or clients of the applicant's spouse/domestic partner and of the entity of which the applicant is aware, and (3) any other business and other governmental customers or clients of the entity whose identities are known to the applicant and whose interests are significantly affected by the agency or jurisdiction in which the applicant seeks or holds office. The commission may apply (e)(i) through (iii) of this subsection when the

applicant's spouse/domestic partner is a lawyer, judge, or motor vehicle dealer.

(2) "Bona fide separate property agreement" means an agreement or court order describing separate property in a valid:

(a) Prenuptial agreement;

(b) Separate property contract under chapter 26.09 RCW;

(c) Separate property court decree under chapter 26.09 RCW;

(d) Domestic partnership agreement under chapter 26.60 RCW;

(e) Domestic partnership agreement as part of a notice of termination under chapter 26.60 RCW; or

(f) Postnuptial agreement.

(3) "Other bona fide separate status" means a valid written agreement or court decree recognizing the separate status of the parties under state law, including their individual property that is separate under state law.

[Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-28-100, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370(1). WSR 09-20-081, § 390-28-100, filed 10/6/09, effective 11/6/09; WSR 85-22-029 (Order 85-04), § 390-28-100, filed 10/31/85; WSR 80-02-106 (Order 80-02), § 390-28-100, filed 1/24/80; Order 64, § 390-28-100, filed

11/25/75; Order 62, § 390-28-100, filed 8/26/75; Order 24, § 390-28-100, filed 2/21/74.]