

State of Washington
PUBLIC DISCLOSURE COMMISSION
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MINUTES – Special Meeting

9:00 a.m. | October 19, 2016
Evergreen Plaza Building, Room 206
711 Capitol Way
Olympia, Washington

Commission Members (participated via conference call)

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

Absent: Katrina Asay, Member.

Staff Present

Evelyn Fielding Lopez, Executive Director; Penny Allen, Assistant Attorney General; Tony Perkins, Compliance Officer; Lori Anderson, Communications and Training Officer; Jana Greer, Executive Assistant.

The special meeting of the Public Disclosure Commission was called to order by Commission Chair Anne Levinson at 9:00 a.m.

Enforcement/Report to the Commission | (45-Day Citizen Action complaint filed by Dmitri Iglitzin and Laura Ewan on behalf of the “Campaign to Prevent Fraud and Protect Seniors”.

[PDC Mtg Audio](#)

Chair Levinson explained the difference between 45-Day Citizen Action complaints and a regular Public Disclosure Commission (PDC) investigation.

In order to minimize the confusion of the public, complainants, and respondents about the process, going forward the Commission asked that PDC staff provide their work, not in a form of a traditional PDC report of investigation, but in a manner that makes clear that these matters are different, a more abbreviated review, and that the Commission’s role in these matters is to do the initial review and refer back to the Attorney General (AG) with either no recommendation regarding further action, a recommendation that the AG take action, or a recommendation that the AG take no action.

For the purpose of the matter being reported on at this meeting, PDC staff presented the matter in the format that has been used to date and the Commission acknowledges that it is a 45-Day Citizen Action complaint.

Tony Perkins reported staff’s findings, conclusions, and recommendations regarding the allegations contained in PDC Case No. 8336, a 45-Day Citizen Action complaint filed on August 30, 2016 with the Washington State Attorney General and Thurston County Prosecutor by Dmitri Iglitzin and Laura Ewan on behalf of the Campaign to Prevent Fraud and Protect Seniors (Yes on I-1501), alleging violations of RCW 42.17A by the Freedom Foundation.

The Notice alleged that the Freedom Foundation failed to file special C-6 reports disclosing independent expenditure activity in opposition to statewide Initiative 1501, an alleged violation of RCW 42.17A.255 and WAC 390-16-063. The Notice further alleged that Freedom Foundation is a political committee under the “maker of expenditures” prong of the statutory definition of that term, and failed to register as required under RCW 42.17A.205 and report expenditures as required under RCW 42.17A.225.

Staff recommended that the Commission find multiple violations of RCW 42.17A.255 by the Freedom Foundation for the failure to disclose, or timely disclose, independent expenditure activity opposing Initiative 1501, and recommend to the Washington State Attorney General that he take appropriate legal action.

Staff also recommended that the Commission recommend no action by the Attorney General concerning the allegation that the Freedom Foundation failed to register and report as a political committee under RCW 42.17A.205, RCW 42.17A.225, RCW 42.17A.235, or RCW 42.17A.240.

Greg Overstreet, managing attorney for the Freedom Foundation, addressed the Commission.

Motion 16-55 Moved by Commissioner Johnson, seconded by Commissioner Bridges that:

The Commission return the complaint to the Washington State Attorney General with a recommendation to take legal action as appropriate.

The motion was approved.

Next Steps/Follow Up:

- Staff will prepare and send a transmittal to the Attorney General on behalf of the Commission.
- PDC staff will provide 45-Day Citizen Action complaints in a manner that makes clear that these are different, more abbreviated reviews and that the Commission's role in these matters is to do the initial review and refer back to the Attorney General.

Rules | Discussion – possible updates to enforcement rules, Chapter 390-37 WAC

[PDC Mtg Audio](#)

As a continuation/follow-up to the September 26 regular meeting discussion regarding updating enforcement rules, the brief hearing process, and the expansion of the use of the Statements of Understanding, Lori Anderson presented options of ways to move to a “point-based” penalty schedule for the Commission to review.

Two options were presented to the Commission for review and consideration:

- **Option A** | would replace the current penalty schedules and address additional violations of failing to file timely contribution and expenditure reports, exceeding contribution limits, exceeding the mini reporting threshold, political advertising issues, and use of public facilities to support a ballot measure or a candidate campaign. Option A also addresses recurring violations. This option would result in a single penalty schedule that would be used for all brief enforcement hearings.
- **Option B** | would supplement the current penalty schedules and address only the additional violations set out above. Option B allows the Commission to test the point-based system on a limited basis while continuing to use the current penalty schedules.

Ms. Anderson reported that staff received stakeholder input on the options; a total of two responses, both positive. One response voiced concern about using experience as a mitigating factor.

Commissioner Levinson reminded staff and the Commission of the goal that the Commission has had of streamlining the PDC rules so that it is easier for the regulated community to

comply. The Commission and staff have been looking for ways across the statutes and rules to become as consistent as possible.

She mentioned that when the Commission originally discussed expanding alternative resolution options and how to prioritize investigations given limited resources, the Commission came up with a set of factors for the staff to look at and prioritize in the investigative work. As the Commission considers the factors for penalties, they will look to continue to use consistent language and factors in both investigation prioritization and in the relevant rules.

Commissioner Levinson suggested a third option "**Option C**", having a uniform penalty schedule across all of the types of violations - a single penalty schedule. Also a set of aggravating and mitigation factors that is before the presiding officer and/or the Commission for their consideration so that there is consistency of thought as presiding officers change. This may not be a point system but the value of having a consistent frame work for thinking about how to weigh mitigating and aggregating factors regardless of the type of violation, and regardless of who is the presiding officer.

Option C would potentially have the benefit of a singular consistent schedule and a singular documented transparent set of aggravating and mitigating factors to be weighed.

What it would not have would be the points associated with those factors, still leaving the discretion with the presiding officer if she/he finds that mitigation or aggravating factors exist. This is not as determinate and clear to the regulated community as to what the amount would be ahead of time, but it is clearer in terms of everyone knowing the rules and what might influence the ultimate outcome.

The Commission requested staff to proceed with draft language incorporating items discussed and bring proposed language for Option C to the Commission for consideration at the October 27 regular Commission meeting.

Next Steps/Follow Up: Staff will send "Option C" to stakeholders for input and will bring proposed language to the Commission for consideration and approval at the October 27 regular meeting.

The meeting adjourned at 9:57 a.m.

Minutes approved December 8, 2016