



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112
Toll Free 1-877-601-2828 • E-mail: pdcc@pdcc.wa.gov • Website: www.pdcc.wa.gov

TO: Commission Members
FROM: Tony Perkins, Acting Assistant Director
DATE : May 21, 2015
RE: **May 28, 2015 Meeting - Draft New Rules, Rule Amendments -
Alternative Responses to Non-Compliance**

Background

At its March 26, 2015 regular meeting, the Commission began a discussion of its 2013 – 2015 Strategic Plan action item, “*Enhance and adopt guidance for alternative responses to non-compliance (e.g., technical assistance, warning/advisory letters, notices of correction, etc.) and amend regulations accordingly.*” Staff discussed the need for additional tools to facilitate the expeditious resolution of minor complaints, helping to ensure the efficient and effective use of Commission and staff resources. The Commission considered a variety of possible alternative responses to non-compliance, together with the nature of complaints that may call for an alternative response.

Following the March meeting, staff conducted stakeholder work concerning one possible alternative response, the publication of complaints and responses in a manner similar to the Fair Campaign Practices Code complaint process (WAC 390-32-030).

On April 20, 2015, Lori Anderson filed a preproposal statement with the Code Reviser for rule making on alternative responses to non-compliance.

At the Commission’s April 26, 2015 meeting, staff presented the results of staff’s stakeholder work, and an update on possible new and amended rules. The Commission asked staff to bring draft rule language back to the Commission for review and possible approval at the May meeting.

Action & Next Steps

The May 28, 2015 agenda includes a review and possible Commission approval of seven proposed draft rule amendments, and drafts of four proposed new rules.

All of the draft language prepared for the May meeting concerns sections under Chapter 390-37 WAC, the Commission's enforcement hearing (adjudicative proceeding) rules.

Staff will also discuss policy questions that have come up in the process of writing draft rules. Following that discussion, and based on the Commission's direction, staff will produce draft language for possible amendments to other rules, including sections under Chapters 390-37 and 390-32 WAC (the Fair Campaign Practices Code). Staff will bring that language to the Commission on or after the June meeting for review and possible approval, together with any revised draft language requested at the May meeting.

After the Commission has approved proposed rule language to address this strategic plan item, staff will file the proposal with the Code Reviser, scheduling a public hearing and possible adoption in the later summer or early fall. The rules would become effective 31 days after adoption.

Enclosed Drafts

The following is a summary of the enclosed draft rule amendments, and drafts of new rules, to provide for alternative responses to non-compliance. In addition to the substantive changes being recommended, the draft rule amendments also include non-substantive changes (reformatting citations, eliminating redundancies, etc.).

Draft New Rules:

- **WAC 390-37-055** – To describe the available alternative responses to non-compliance under the Commission's amended rules;
- **WAC 390-37-056** – To explain 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;
- **WAC 390-37-057** – To establish procedures for notices of correction as an alternative response to non-compliance; and
- **WAC 390-37-058** – To establish procedures for deferred enforcement as an alternative response to non-compliance.

Draft Amended Rules:

- **WAC 390-37-010** – To include notices of correction and deferred enforcement among the alternative resolution methods discussed (in general terms) in the current rule;

- **WAC 390-37-050** – To provide for a description, in a respondent’s notice of complaint, of any alternative response issued as of the date of the notice;
- **WAC 390-37-060** – To provide authority for the executive director to issue an alternative response to non-compliance following an initial review of a complaint. In addition, to clarify the Commission’s policy concerning the inspection and copying of records generated or collected during the course of an investigation.
- **WAC 390-37-070** – To provide for alternative responses without the concurrence of the chair or the chair’s designee, in accordance with the process provided by the Commission’s amended rules;
- **WAC 390-37-103** – To establish that, following receipt of a staff report concerning alleged violations, the Commission may also direct staff to issue an alternative response in accordance with the Commission’s rules;
- **WAC 390-37-140** – To provide the authority of the presiding officer to assess a penalty of up to \$1,000 at a brief adjudicative proceeding (brief hearing); and
- **WAC 390-37-142** – To reflect the increased penalty authority for brief hearings provided by WAC 390-37-140. In addition, to provide the process for a respondent to waive a brief hearing, as authorized under the Administrative Procedures Act, by submitting a statement of understanding and other required elements.

Policy Questions – Possible Additional Rules

As staff prepares draft rule language to provide for the publication of complaints and responses concerning alleged violations of RCW 42.17A in a manner similar to the Fair Campaign Practices Code complaint process (WAC 390-32-030), we would appreciate guidance to help us understand the Commission’s goals.

As an alternative to a formal investigation or adjudicative proceeding, the complaint publication process could be used to fully dispose of the allegations in a complaint. If this is Commission’s preferred option, staff understands that this alternative response would be reserved for instances where the executive director determines that a formal investigation would not effectively address the complaint, taking into account the nature of the allegations, the available evidence, and the Commission’s goals, objectives, and the factors described in the new rule WAC 390-37-056.

Alternatively, the complaint publication process could be used to provide for the provisional resolution of a complaint. This airing of the issues could be followed by further review of the complaint and processing by staff under WAC 390-37-060, including a possible formal investigation and adjudicative proceeding, a report to

the Commission, or an additional alternative response (e.g., a formal written warning, notice of correction, or deferred enforcement).

With the Commission's direction on this point, staff will provide draft language for the Commission's review and possible approval on or after the June meeting. Note that if the Commission chooses to pursue the complaint publication process as a provisional resolution method, it may be necessary to revise the draft amendment to WAC 390-37-060, to establish the effect of the complaint publication process on the availability of investigative records for copying and inspection.

Finally, unrelated to the above, if the Commission proceeds with rule making to increase the brief hearing penalty authority to \$1,000, it may also wish to consider adjusting the brief hearing penalty schedules in WAC 390-37-155 (for electronic filing), WAC 390-37-160 (for F-1 reporting), WAC 390-37-165 (for C-1 and F-1 reporting), WAC 390-37-170 (for L-2 reporting), and WAC 390-37-175 (for L-3 reporting). Currently, those penalty schedules allow for a maximum penalty of \$500 for a respondent's third violation. The Commission may also wish to leave these penalty schedules as they are, and reserve penalties above \$500 for violations not addressed in the schedules (e.g., late contribution or expenditure reporting, uses of public facilities to assist a candidate's campaign, etc.). Copies of the existing penalty schedules are enclosed for the Commission's reference.

Enclosures:

Draft 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—Alternative Responses to Non-compliance—Investigation of complaints—Initiation of hearing (adjudicative proceeding).

WAC 390-37-070 Enforcement procedures—Complaints dismissed by executive director.

WAC 390-37-103 Commission options following receipt of a staff report on alleged violations.

WAC 390-37-140 Brief enforcement hearings (adjudicative proceedings)—Authority.

WAC 390-37-142 Brief enforcement hearing (adjudicative proceeding)—Procedure.

Draft New Rules

WAC 390-37-055 Alternatives to adjudicative proceedings in response to non-compliance.

WAC 390-37-056 Alternative Responses to Non-Compliance - Goals and

Objectives – Factors to be Considered.
WAC 390-37-057 Notices of correction - Process.
WAC 390-37-058 Deferred enforcement - Process.

Existing Rules – Brief Hearing Penalty Schedules

WAC 390-37-155 Electronic filing brief enforcement hearing penalty schedule.
WAC 390-37-160 Statement of financial affairs (F-1) penalty schedule.
WAC 390-37-165 Candidate registration statement (C-1)/candidate statement of financial affairs (F-1) penalty schedule.
WAC 390-37-170 Lobbyist monthly expense report (L-2) penalty schedule.
WAC 390-37-175 Lobbyist employer report (L-3) penalty schedule.

**Draft - Possible New Rules
Alternative Responses to Non-compliance**

NEW SECTION

WAC 390-37-055 Alternatives to adjudicative proceedings in response to non-compliance. (1) Considering the factors set forth in WAC 390-37-056(3), the executive director may authorize an alternative response to non-compliance in lieu of a formal investigation, adjudicative proceeding, or both.

(2) Alternative responses to non-compliance authorized under this section include:

(a) technical assistance, including assistance in filing or correcting required reports;

(b) formal written warnings;

(c) notices of correction as provided in WAC 390-37-057;

(d) deferred enforcement as outlined in WAC 390-37-058; and

(e) the complaint publication process provided in WAC 390-32-030.

NEW SECTION

WAC 390-37-056 Alternative Responses to Non-Compliance - Goals and Objectives - Factors to be Considered. (1) In considering appropriate responses to non-compliance with RCW 42.17A or WAC 390, 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 serves the public and those who participate in the political process by allowing the expedited resolution of minor complaints, and the focusing of staff and commission resources on major alleged violations of RCW 42.17A and WAC 390.

(2) In authorizing an alternative response to non-compliance for minor violations as provided by WAC 390-37-055, the executive director may consider the nature of the alleged violation and any relevant circumstances, including but not limited to the factors described in (3) of this section; Provided that if, after weighing the relevant circumstances and factors, the executive director determines that there is evidence of complex or significant violations, 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 authorizing an alternative response to non-compliance include, but are not limited to:

(a) The respondent's compliance history, including whether the non-compliance was isolated or limited in nature, indicative of systematic or on-going problems, 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, or principal decision-makers;

(b) The impact of the non-compliance on the public, including whether the non-compliance deprived the public of timely or accurate information during a time-sensitive period;

(c) Sophistication of respondent, or respondent's organization, or size of campaign;

(d) Amount of financial activity during statement period or election cycle;

(e) Whether it appears that the non-compliance may have resulted from a knowing or intentional effort to conceal, deceive or mislead, or violate the law;

(f) Whether the late or unreported activity was significant in amount or duration under the circumstances;

(g) Whether the respondent or anyone else benefitted economically from the non-compliance;

(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 good-faith uncertainty concerning staff guidance or instructions, or uncertainty concerning the valid application of the commission's rules;

(l) Corrective action or other remedial measures initiated by respondent prior to any complaint, or promptly taken when non-compliance brought to respondent's attention (e.g., filing missing reports, amending incomplete or inaccurate reports, returning prohibited or overlimit contributions);

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

(n) Good faith efforts to comply, including consultation with commission staff following a complaint and cooperation with commission staff during any preliminary investigation; and

(o) Other factors relevant to a particular case.

NEW SECTION

WAC 390-37-057 Notices of correction - Process. (1) As provided by WAC 390-37-055, and considering the factors set forth in WAC 390-37-056(3), following an initial review of a complaint under WAC 390-37-060, the executive director may authorize a notice of correction as an alternative response to non-compliance in lieu of a formal investigation.

(2) A notice of correction recites available facts and information from staff's review of a complaint, confirms staff's determination that the respondent is not in substantial compliance with the relevant statutes and rules, and states the necessary corrective action(s) the respondent has taken or agrees to take. If the corrective action is completed, no further response to the complaint is necessary and staff may close the complaint.

(3) If the corrective action is not completed, the executive director may direct a formal investigation be conducted as provided in WAC 390-37-060.

NEW SECTION

WAC 390-37-058 Deferred Enforcement - Process. (1) As provided by WAC 390-37-055, and considering the factors set forth in WAC 390-37-056(3), the executive director may authorize deferred enforcement as an alternative response to non-compliance in lieu of a formal investigation, adjudicative proceeding, or both.

(2) The executive director may authorize deferred enforcement:

(a) following an initial review of a complaint, when minor or technical violations by the respondent are readily apparent); or

(b) following a formal investigation, in lieu of a notice of administrative charges for an adjudicative proceeding; or

(c) after a notice of administrative charges, prior to an adjudicative proceeding.

(3) The conditions of deferred enforcement 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.

(4) With an agreement between the respondent and commission staff, 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.

(5) Once the deferral conditions are met, the complaint shall be dismissed with no further investigation or action as provided by WAC 390-37-070.

(6) If the deferral conditions are not met, the complaint shall proceed in accordance with WAC 390-37-060.

**Draft - Possible Rule Amendments
Alternative Responses to Non-compliance**

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 RCW 34.05~~-RCW. Unless they differ or are otherwise specifically addressed in this chapter, the procedures, are supplemented by the model rules of procedure in ~~chapter WAC 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 WAC 390-24 and WAC 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 as set forth in WAC 390-37-57, WAC 390-37-58, or WAC 390-37-090 when appropriate. Informal settlements are encouraged by RCW 34.05.060.

[Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-37-010, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 03-22-065, § 390-37-010, filed 11/4/03, effective 12/5/03; Order 79, § 390-37-010, filed 6/25/76.]

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 commission staff has issued an alternative response to the alleged violation as provided by this chapter, the notice shall also describe that response, including any conditions the respondent is required to meet.

[Statutory Authority: RCW 42.17.370. WSR 03-22-065, § 390-37-050, filed 11/4/03, effective 12/5/03. Statutory Authority: RCW 42.17.370(1). WSR 79-08-046 (Order 79-03), § 390-37-050, filed 7/19/79; Order 81, § 390-37-050, filed 7/22/76.]

~~non-compliance—Investigation of complaints—Initiation of hearing (ad-~~

~~judicative 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. An initial review is a preliminary investigation to determine if there is sufficient ground indicating that a material violation of ~~chapter RCW 42.17A RCW~~ may have occurred and/or the respondent may not be in substantial compliance with the relevant statutes and rules.

(b) Whenever an initial review of a complaint indicates that a material violation of ~~chapter RCW 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:

~~(i) dispose of the complaint through an alternative response as provided in WAC 390-37-055; or~~

(ii) direct a formal investigation be conducted.

(2e) 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.

(32) The executive director shall initiate an adjudicative proceeding or provide a report to the commission whenever an formal investigation reveals facts that the executive director has reason to believe are a material violation of ~~chapter RCW 42.17A RCW~~ and do not constitute substantial compliance.

(43) The respondent shall be notified of the date of the adjudicative proceeding 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.

(54) 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 investigation is complete and 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 executive director disposes of the complaint through an alternative response as provided in this section. or~~

~~(iv) The commission or executive director otherwise finally disposes of the complaint.~~

(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) 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.

[Statutory Authority: RCW 42.56.100, 42.56.040, and 42.17A.110. WSR 12-18-015, § 390-37-060, filed 8/24/12, effective 9/24/12. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-37-060, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 05-11-001, § 390-37-060, filed 5/4/05, effective 6/4/05; WSR 03-22-065, § 390-37-060, filed 11/4/03, effective 12/5/03; WSR 93-24-003, § 390-37-060, filed 11/18/93, effective 12/19/93; WSR 91-16-072, § 390-37-060, filed 8/2/91, effective 9/2/91. Statutory Authority: RCW 42.17.370(1). WSR 86-04-071 (Order 86-01), § 390-37-060, filed 2/5/86; WSR 84-12-017 and 84-12-029 (Orders 84-03 and 84-03A), § 390-37-060, filed 5/25/84 and 5/29/84; Order 81, § 390-37-060, filed 7/22/76.]

WAC 390-37-070 Enforcement procedures—Complaints dismissed by ex-

ecutive director. The executive director, ~~with the concurrence of the chair or the chair's designee,~~ 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 RCW 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.~~

The dismissal may occur:

- (a) Following an initial review, through an alternative response authorized by the executive director as provided by WAC 390-37-060; or
- (b) Following a formal investigation, with the concurrence of the chair or the chair's designee.

[Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-37-070, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 03-22-065, § 390-37-070, filed 11/4/03, effective 12/5/03. Statutory Authority: RCW 42.17.390. WSR 94-05-010, § 390-37-070, filed 2/3/94, effective 3/6/94. Statutory Authority: RCW 42.17.370(1). WSR 86-04-071 (Order 86-01), § 390-37-070, filed 2/5/86; WSR 84-12-017 (Order 84-03), § 390-37-070, filed 5/25/84; Order 81, § 390-37-070, filed 7/22/76.]

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 RCW 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; 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.

[Statutory Authority: RCW 42.17.130 and 42.17.093. WSR 12-01-047, § 390-37-103, filed 12/14/11, effective 1/14/12. Statutory Authority: RCW 42.17.370. WSR 03-22-065, § 390-37-103, filed 11/4/03, effective 12/5/03.]

WAC 390-37-140 Brief enforcement hearings (adjudicative proceed-

ings)—Authority. (1) The commission may provide a brief adjudicative proceeding for violations of the sections of ~~chapter RCW 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,

(b) Failure to report or accurately report campaign contributions or expenditures or funds spent in lobbying,

(c) Use of public office facilities in election campaigns when the value of public funds expended was minimal,

(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.

[Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-37-140, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 03-

22-065, § 390-37-140, filed 11/4/03, effective 12/5/03; WSR 93-15-004,
§ 390-37-140, filed 7/7/93, effective 8/7/93; WSR 91-16-072, § 390-37-
140, filed 8/2/91, effective 9/2/91.]

WAC 390-37-142 Brief enforcement hearing (adjudicative proceed-

ing)—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: (i) a signed statement of understanding, (ii) any missing required reports, and (iii) 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.

(a) As used in this section, the term "statement of understanding" means a written statement signed by the respondent that: (i) acknowledges

a violation of RCW 42.17A and any relevant rules, and (ii) expresses the respondent's understanding that the commission will not hold any adjudicative proceeding concerning the violation.

(43) 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.

(54) 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.

(65) 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.

[Statutory Authority: RCW 42.17.370. WSR 03-22-065, § 390-37-142, filed 11/4/03, effective 12/5/03. Statutory Authority: RCW 42.17.390. WSR 94-

05-010, § 390-37-142, filed 2/3/94, effective 3/6/94. Statutory Authority: RCW 42.17.370. WSR 93-15-004, § 390-37-142, filed 7/7/93, effective 8/7/93; WSR 91-16-072, § 390-37-142, filed 8/2/91, effective 9/2/91.]

Existing Rules – Brief Enforcement Hearing Penalty Schedules

WAC 390-37-155

Agency filings affecting this section

Electronic filing brief enforcement hearing penalty schedule.

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to electronically file by date required.	\$250	\$350	\$500	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.

(3) The presiding officer may direct a matter to the full commission if the officer believes five hundred 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 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.

[Statutory Authority: RCW 42.17.370. WSR 03-22-065, § 390-37-155, filed 11/4/03, effective 12/5/03.]

WAC 390-37-160

Agency filings affecting this section

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	\$300	\$500	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$100	\$200	\$400	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	\$100 - \$200	\$200 - \$400	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.
- (3) The presiding officer may direct a matter to the full commission if the officer believes five hundred 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 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,
 - (b) The violation remains in effect following any appeals, 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.

[Statutory Authority: RCW 42.17.370. WSR 05-04-038, § 390-37-160, filed 1/27/05, effective 2/27/05; WSR 03-22-065, § 390-37-160, filed 11/4/03, effective 12/5/03.]

WAC 390-37-165

Agency filings affecting this section

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.	\$150 per report	\$300 per report, up to \$500	Full commission consideration	Full commission consideration
Filed reports after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$100 per report	\$200 per report	\$400	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 per report	\$100 - \$200 per report	\$200 - \$400	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.

(3) The presiding officer may direct a matter to the full commission if the officer believes five hundred 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 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,

(b) The violation remains in effect following any appeals, 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.

[Statutory Authority: RCW 42.17.370. WSR 05-04-038, § 390-37-165, filed 1/27/05, effective 2/27/05; WSR 03-22-065, § 390-37-165, filed 11/4/03, effective 12/5/03.]

WAC 390-37-170

Agency filings affecting this section

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	\$300	\$500	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$100	\$200	\$400	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	\$100 - \$200	\$200 - \$400	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. 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 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 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,

(b) The violation remains in effect following any appeals, 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.

[Statutory Authority: RCW 42.17.370. WSR 05-04-038, § 390-37-170, filed 1/27/05, effective 2/27/05; WSR 03-22-065, § 390-37-170, filed 11/4/03, effective 12/5/03.]

WAC 390-37-175

Agency filings affecting this section

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	\$300	\$500	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$100	\$200	\$400	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	\$100 - \$200	\$200 - \$400	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.

(3) The presiding officer may direct a matter to the full commission if the officer believes five hundred 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 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,

(b) The violation remains in effect following any appeals, 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.

[Statutory Authority: RCW 42.17.370. WSR 05-04-038, § 390-37-175, filed 1/27/05, effective 2/27/05; WSR 03-22-065, § 390-37-175, filed 11/4/03, effective 12/5/03.]