

Chapter 390-28 WAC

MODIFICATIONS OF REPORTING REQUIREMENTS—PROCEDURES

Last Update: 12/24/19

WAC

- 390-28-020 Definition—Applicant.
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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

390-28-010 Statement of policy. [Order 62, § 390-28-010, filed 8/26/75; Order 24, § 390-28-010, filed 2/21/74.]

Repealed by WSR 85-22-029 (Order 85-04), filed 10/31/85. Statutory Authority: RCW 42.17.370(1).

390-28-021 Definition-Hearing officer. [Order 62, § 390-28-021, filed 8/26/75.] Repealed by WSR 85-22-029 (Order 85-04), filed 10/31/85. Statutory Authority: RCW 42.17.370(1).

390-28-030 Hearing to modify reporting-Form-Right to by applicants. [Order 62, § 390-28-030, filed 8/26/75; Order 24, § 390-28-030, filed 2/21/74.] Repealed by WSR 85-22-029 (Order 85-04), filed 10/31/85. Statutory Authority: RCW 42.17.370(1).

390-28-050 Hearing to modify reporting-Alternate forms. [Statutory Authority: RCW 42.17.370(1). WSR 85-22-029 (Order 85-04), § 390-28-050, filed 10/31/85; Order 62, § 390-28-050, filed 8/26/75; Order 24, § 390-28-050, filed 2/21/74.] Repealed by WSR 91-21-

030, filed 10/9/91, effective 11/9/91. Statutory

Authority: RCW 42.17.370.

WAC 390-28-020 Definition—Applicant. The term applicant

for the purposes of chapter 390-28 WAC means any ~~individual~~
~~required to file a statement of financial affairs~~ person who

seeks a modification of the filing requirements pursuant to RCW
42.17A.120 and these rules.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c
261. WSR 20-02-062, § 390-28-020, filed 12/24/19, effective
1/24/20. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, §
390-28-020, filed 1/4/12, effective 2/4/12. Statutory Authority:
RCW 42.17.370. WSR 07-14-117, § 390-28-020, filed 7/3/07,
effective 8/3/07; WSR 91-22-083, § 390-28-020, filed 11/5/91,
effective 12/6/91. Statutory Authority: RCW 42.17.370(1). WSR
85-22-029 (Order 85-04), § 390-28-020, filed 10/31/85; Order 62,
§ 390-28-020, filed 8/26/75; Order 24, § 390-28-020, filed
2/21/74.]

WAC 390-28-025 Hearing to modify reporting requirements.

(1) Any individual who considers compliance with any of the
reporting requirements of chapter 42.17A RCW to be a manifestly
unreasonable hardship in a particular case may apply for a

Commented [SF1]: Modifications can be sought for any reporting requirement, not just F-1 filers. There are sections in this chapter that specifically relate to F-1 requirements, but those are specified.

modification of such reporting requirements pursuant to RCW 42.17A.120 and further pursuant to these rules.

(2) A hearing to modify the reporting requirements will be conducted pursuant to the Administrative Procedure Act (chapter 34.05 RCW) and its supporting regulations (chapter 10-08 WAC), unless otherwise modified by chapter 390-28 WAC.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-28-025, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-28-025, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 92-05-080, § 390-28-025, filed 2/18/92, effective 3/20/92; WSR 91-22-083, § 390-28-025, filed 11/5/91, effective 12/6/91. Statutory Authority: RCW 42.17.370(1). WSR 85-22-029 (Order 85-04), § 390-28-025, filed 10/31/85; Order 62, § 390-28-025, filed 8/26/75; Order 24, § 390-28-025, filed 2/21/74.]

WAC 390-28-040 Hearing to modify reporting—Prehearing

procedure and requirements. (1) An applicant must electronically submit with the commission a request for a hearing for suspension or modification of reporting requirements, unless the executive director makes an exception

for an applicant who lack the technological ability to file reports electronically. An applicant requesting a modification regarding a report filed annually, including but not limited to the statement of financial affairs, ~~The request should be submitted by the tenth day of the month preceding the month in which the application at least 45 days before the report is due~~ so that action on the request can be completed before the filing deadline.

Commented [SF2]: This clarifies that the deadline for requesting a mod only applies for annual F-1 filers. The does not work for campaign reports, where the reporting deadlines are much shorter.

Commented [SF3]: A 45 day deadline is more standard than setting to a calendar date, as the time between that date and the commission meeting varies.

(2) The request must contain (a) the required report completed to the extent possible, (b) a statement of reasons why the reporting of required information would cause a manifestly unreasonable hardship, with as much detail as possible, and (c) any relevant evidence regarding the request. (A general statement, such as "violates right of privacy" will not be deemed as sufficient compliance with this requirement.) The applicant is encouraged to also include a proposed modification to the required reporting which, in the applicant's opinion, will relieve the perceived hardship.

(3) The submission of a request for modification does not suspend the reporting requirement of any portion of chapter

42.17A RCW. The reporting obligation remains in effect unless the commission grants the request pursuant to a hearing. [Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-28-040, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-28-040, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 91-22-083, § 390-28-040, filed 11/5/91, effective 12/6/91. Statutory Authority: RCW 42.17.370(1). WSR 85-24-020 (Order 85-05), § 390-28-040, filed 11/26/85; WSR 80-03-089 (Order 80-03), § 390-28-040, filed 3/4/80; Order 62, § 390-28-040, filed 8/26/75; Order 24, § 390-28-040, filed 2/21/74.]

WAC 390-28-060 Hearing to modify reporting—Brief adjudicatory proceedings—Presiding officer. Reporting modification requests may be heard in a brief adjudicatory proceeding, as provided under the Administrative Procedure Act, RCW 34.05.482 through 34.05.494, and WAC 390-37-140 through 390-37-144. The commission may preside over the proceedings. Alternatively, one of the following persons may act as the presiding officer: The commission chair; another commissioner appointed by the chair; or, at the request of the commission

chair, an administrative law judge through the office of administrative hearings.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-28-060, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110. WSR 17-03-028, § 390-28-060, filed 1/6/17, effective 2/6/17; WSR 12-03-002, § 390-28-060, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 91-22-083, § 390-28-060, filed 11/5/91, effective 12/6/91. Statutory Authority: RCW 42.17.370(1). WSR 85-22-029 (Order 85-04), § 390-28-060, filed 10/31/85; Order 67, § 390-28-060, filed 1/16/76; Order 62, § 390-28-060, filed 8/26/75; Order 24, § 390-28-060, filed 2/21/74.]

WAC 390-28-070 Hearing to modify reporting—By affidavit or sworn statement. (1) An applicant may choose to waive a personal appearance at a hearing conducted pursuant to chapter 390-28 WAC. In the event that an applicant chooses to waive such appearance, the applicant must submit a written, sworn statement setting out in detail the rationale for requesting modification or suspension.

(2) The commission or presiding officer will decide the application in the same manner as if an appearance were made.

However, in the event the commission, or presiding officer is not able to reach a conclusion on the request because of an insufficiency of the evidence, the hearing may be adjourned for the purposes of gathering further evidence, or the application may be denied.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-28-070, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17.370. WSR 07-14-117, § 390-28-070, filed 7/3/07, effective 8/3/07. Statutory Authority: RCW 42.17.370(1). WSR 85-22-029 (Order 85-04), § 390-28-070, filed 10/31/85; Order 64, § 390-28-070, filed 11/25/75; Order 62, § 390-28-070, filed 8/26/75; Order 24, § 390-28-070, filed 2/21/74. Formerly WAC 390-28-080.]

WAC 390-28-080 Hearing to modify reporting—Evidence, record, adverse decisions. (1) All evidence presented at hearings held pursuant to chapter 390-28 WAC and RCW 42.17A.120 are considered to be a public record. However, if a modification of reporting requirements is requested by a filer because of a concern for personal safety that is caused by the potential disclosure of information required to be reported, upon request by the filer, the information submitted for that modification

request regarding that safety concern will not be made public prior to, or at the hearing on the request for modification. In accordance with RCW 42.17A.120, any information provided or prepared **by the applicant** for the modification hearing will remain exempt from public disclosure under chapters 42.17A and 42.56 RCW to the extent it is determined at the hearing that disclosure of such information would reasonably present a personal safety risk to the applicant or a member of their family. If no written order is entered based on findings pursuant to this section, then the exempted information will become available for public disclosure.

(2) Except as otherwise provided in subsection (1) of this section, there is a presumption that all hearings and evidence presented in hearing records are open to the public. Requests for closure of hearings or portions of hearings or hearing records generally will be denied. However, pursuant to RCW 34.05.449(5) and 42.17A.120, the commission or presiding officer may close the hearing or a portion of the hearing or hearing record for a limited purpose to protect compelling interests and

Commented [SF4]: This clarifies that the cover page and other material prepared by staff is not exempt.

where closure is specifically justified if it finds that it is necessary to allow the applicant to:

(a) Provide sufficient evidence to assure that proper findings are made regarding the name of an entity the disclosure of which would likely adversely affect the competitive position of the applicant as provided in RCW 42.17A.120; or

(b) Provide other information or relevant legal authorities for which it finds a compelling interest has otherwise been shown by the applicant to close the hearing.

(3) (a) Before concluding that closure of a hearing or portion of a hearing or hearing record is warranted, the commission or presiding officer must find by clear and convincing evidence that:

(i) The applicant has satisfied a basis for seeking closure under subsection (2) (a) or (b) of this section;

(ii) An open hearing or record to report the information would present a manifestly unreasonable hardship, or personal safety risk, to the applicant;

(iii) Anyone present when the closure request is made has been given an opportunity to object to the closure;

(iv) The proposed method for closing the hearing or hearing record is the least restrictive means available for protecting the threatened interests, after considering alternatives;

(v) The commission or presiding officer has had the opportunity to weigh the competing interests of the applicant seeking closure and the public's interests;

(vi) Closing the hearing or portion of the hearing or hearing record will not frustrate the purposes of chapter 42.17A RCW; and

(vii) The proposed protective order is not broader in its application or duration than necessary to serve its purpose.

(b) All evidence presented at any portion of a closed session identifying the matters for which the applicant requests modification under these rules will be considered confidential by the commission or presiding officer pursuant to a protective order which will be entered by the commission or presiding officer unless otherwise ordered by a court of competent jurisdiction. In the event that an administrative law judge, acting as the presiding officer, determines that testimony in

private may be necessary, the judge will immediately adjourn the hearing and refer the matter to the commission.

(4) Any decision or order rendered by the commission or presiding officer must be in writing or stated in the record, however any dispositive order accompanied by findings of fact and conclusions of law must be in writing. The full commission may review any order rendered by a presiding officer, pursuant to WAC 390-37-144.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-28-080, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-28-080, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 07-14-117, § 390-28-080, filed 7/3/07, effective 8/3/07; WSR 91-22-083, § 390-28-080, filed 11/5/91, effective 12/6/91. Statutory Authority: RCW 42.17.370(1). WSR 85-22-029 (Order 85-04), § 390-28-080, filed 10/31/85; Order 62, § 390-28-080, filed 8/26/75; Order 24, § 390-28-080, filed 2/21/74. Formerly WAC 390-28-070.]

WAC 390-28-090 Hearing to modify reporting—Required

findings. (1) The commission or presiding officer, after a hearing, as provided in these rules, may suspend the applicable

reporting requirement of chapter 42.17A RCW if the commission or presiding officer finds that the literal application of such requirement works a manifestly unreasonable hardship in the case under consideration and if it also finds that such suspension or modification will not frustrate the purposes of the act. The commission or presiding officer must suspend or modify such reporting requirement or requirements only to the extent necessary to substantially relieve such hardship, and only upon clear and convincing proof to support such claim.

(2) The commission or presiding officer may approve a modification for the length of an elected official's term of office, or up to three years for an executive state officer. If the commission has approved a modification for more than one year, and there is a material change in the applicant's circumstances or relevant information after the initial year, then the applicant must request a modification at least one month prior to the next filing deadline (rather than at the conclusion of the approval period).

(3) The commission or presiding officer may apply a modification retroactively to previously filed reports. In such

cases, the previously reported information of the kind that is no longer being reported is confidential and exempt from public disclosure under this chapter and chapter 42.56 RCW.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-28-090, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-28-090, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370(1). WSR 85-22-029 (Order 85-04), § 390-28-090, filed 10/31/85; Order 62, § 390-28-090, filed 8/26/75; Order 24, § 390-28-090, filed 2/21/74.]

WAC 390-28-100 Reporting modifications—Possible

~~qualifications—Standards—Statement of financial affairs.~~ (1)

Under RCW 42.17A.120, the commission or presiding officer may modify reporting requirements, including the statement of financial affairs, if literal application of the requirement would work a manifestly unreasonable hardship and the suspension or modification would not frustratethe purpose of the law. One or more of the following may be considered by the commission or presiding officer as possible qualifications for a reporting modification with respect to the statement of financial affairs, when such standard is met:

(a) **Banks, savings accounts, insurance policies - Financial interests.** 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 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 the applicant;

(ii) Such reporting would present a manifestly unreasonable hardship to the 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.** 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 that serves a legitimate business interest, and otherwise was not formed to prevent required

Commented [SF5]: The purpose of these changes are: (1) to ensure that confidential agreements are not simply "rubberstamped" and draws consideration to the underlying purpose of the agreement; and (2) recognizes that confidential relationship (though legal) are not absolute and can be ordered disclosed.

This last point addresses an issue raised in the past about a lawyer's duty to protect the identity of a client under the WSBA professional rules, as a limit on the PDC reporting requirement. The conclusion here is a lawyer may assert the professional responsibility, but a court may order the disclosure. It's an open legal question, but I think it's important to stake the claim here that professional rules do not trump state law.

disclosure, although such relationship may be subject to
administrative subpoena or court order to require disclosure;

(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 applicant in whole or in part;

(iii) Such reporting would present a manifestly unreasonable hardship to the applicant including but not limited to adversely affecting the competitive position of an entity in which the 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.** An applicant may be exempted from reporting the information otherwise required by RCW 42.17A.710 for members of the applicant's immediate family, 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 is

Commented [SF6]: A question here: Do we want the exemption standard to require all four elements are met, or can a filer simply assert sub (iii) and (iv) without making a showing of (i) and (ii)?

Commented [SF7R6]: An alternative would be subordinate sub (i) into sub (iii) so that not every request has to include a confidential relationship:
(Cut-out sub (i)...) " (iii) Such reporting would present a manifestly unreasonable hardship to the applicant including but not limited to: (A) violating a confidential relationship that serves a legitimate business interest, and otherwise was not formed to prevent required disclosure, although such relationship may be subject to administrative subpoena or court order to require disclosure; or (B) adversely affecting the competitive position of an entity in which the applicant had an interest of ten percent or more as described in RCW 42.17A.120;

not a present or prospective source of income to the applicant or to any other person who is dependent upon 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 must 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 must be followed by the name of the county in which the property is located.~~

Commented [SF8]: This standard is already cited in sub(ii) and does not need to be repeated in sub (i). However, the language does emphasize the reporting alternatives.

~~(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. Judges, prosecutors, or sheriffs may describe a personal residence in the alternative

manner provided under RCW 42.17A.710(2), and WAC 390-24-200 without a modification.

(ii) 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 and grant such a modification to amend the description of a residential address to the extent necessary to protect the applicant or an immediate family member who has received a threat, has obtained a no-contact order, or has presented a similar personal safety concern.

(e) **Other.** 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 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:

(A) The names of the business clients for whom the applicant has done legal work;

(B) 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;

(C) 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

(D) 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 identities 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. Alternatively, 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 provided~~ the applicant certifies that the applicant 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 nonincumbent 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:

(A) 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;

(B) Other business and governmental entities that purchased or leased ten or more vehicles from the dealership;

(C) Business customers who paid in excess of twenty thousand dollars for the purchase of parts and/or service from the dealership; and

(D) Any other governmental entity that paid the dealership in excess 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:

(A) All payments made by the agency or jurisdiction in which the applicant seeks or holds office to the entity;

(B) 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

(C) 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;

Commented [SF9]: Subsections (B) and (C) overlap. It appears sub (B) requires reporting the spouses customers AND the entity's customers, whereas sub (C) only addresses the entity's customers. So, the change here would be to remove reference to the entity in (B).

- (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(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-28-100, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110 and 42.17A.120. WSR 14-15-013, § 390-28-100, filed 7/3/14, effective 8/3/14. 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.]