



State of Washington PUBLIC DISCLOSURE COMMISSION

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TO: Members, Public Disclosure Commission
FROM: Nancy Krier, General Counsel
DATE: October 16, 2013
SUBJECT: Role of Commission/Commissioners and Executive Director - Delegations of Authority to Executive Director and History of Website Postings – Continued Discussion Item – October 24, 2013 Meeting

Agenda Item

On August 22, the Commission held its annual retreat. The discussion was slated to review the roles of the Commission and Commissioners with respect to delegations of authority to (and other responsibilities of) the Executive Director. The discussion was also to include a review of decisions on what is posted to the agency's website. However, the discussion was deferred to a later date and has been re-scheduled for the October 24 meeting.

Enclosed are the cover memo and referenced materials from August.

In addition, the August materials listed several examples of delegations through Commission action at meetings, and noted there are many other examples. Enclosed, FYI, are two more examples of such delegations or directions to staff that were approved by the Commission in meetings, which I thought they might be illustrative. Those include Commission delegation to retain outside legal counsel, which was accomplished through a policy. Those also include direction to staff regarding legal strategies, which was accomplished through an attachment to the 2007-2009 Strategic Plan.

Enclosures: August 2013 Retreat Materials
Commission Policy Re Retaining Special Legal Counsel
2007-2009 Strategic Plan Attachment



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TO: Members, Public Disclosure Commission
FROM: Nancy Krier, General Counsel
DATE: August 15, 2013
SUBJECT: Role of Commission/Commissioners and Executive Director - Delegations of Authority to Executive Director and History of Website Postings – Discussion Item at August 22, 2013 Meeting (Retreat)

Agenda Item

On August 22, the Commission is scheduled to hold its annual retreat. The discussion is slated to review the roles of the Commission and Commissioners with respect to delegations of authority to (and other responsibilities of) the Executive Director. This agenda item is a follow-up to an earlier discussion concerning who determines what items are to be posted with Commission meeting agendas, specifically with respect to modification requests. For this discussion, enclosed you will find:

- A background memo describing delegations from the Commission to the Executive Director in statute, rule, the Executive Director Position Description Form, and in Commission meetings;
- A history of posting Commission agendas and agenda materials on the PDC website; and,
- WAC 390-14-026 – Access goals to campaign and lobbying reports.

Summary

In sum, historically, the Commission has delegated many decisions to the Executive Director, including day-to-day operations related to Commission meetings and the agency website. Typically, decisions of what to post on the Commission's website have been made by the Executive Director in conjunction with agency staff, absent a specific statute requiring the online posting of a particular document, or specific direction from the Commission or the Chair.¹

¹ Agency staff may include the Chief Information Technology Officer, the Communications and Training Officer, the Public Records Officer, and the General Counsel.

Delegations Generally

RCW 42.17A.110(2) provides:

The Commission may...

(2) Appoint an executive director and set, within the limits established by the *department of personnel under RCW 43.03.028, the executive director's compensation. *The executive director shall perform such duties and have such powers as the commission may prescribe and delegate to implement and enforce this chapter efficiently and effectively. The commission shall not delegate its authority to adopt, amend, or rescind rules nor may it delegate authority to determine whether an actual violation of this chapter has occurred or to assess penalties for such violations; ...*

[* Now the Office of Financial Management]

(Emphasis added.)

The Commission has prescribed executive director duties and delegations in three ways: through rules, through the ED position description form, and in Commission meetings. The enclosed handout provides you more details and examples. It has been my experience that if an Executive Director had a question about delegated authority, he/she would review it with the Chair, particularly if a decision needed to be made prior to the Commission's next meeting.

History of Online Posting of Commission Meeting Materials

One of the duties of the Executive Director is to manage the day-to-day operations of the agency. Historically, that task has included preparing agendas and materials for Commission meetings, and ensuring the website is operational. Currently, many, but not all, of the Commission meeting materials are posted on the PDC website.

1994-1999. As you can see from the enclosed handout, an earlier version of today's website was first created for the PDC and maintained at the University of Washington in 1994. The website was created to comply with a new law (2ESSB 6426). Among other provisions, the law required that "commission meeting schedules" were to be posted on this website. 2ESSB 6426, codified at former RCW 42.17.367. In implementing the law, meeting minutes show that staff reported to the Commission that agendas of Commission meetings, minutes, statutes, rules and "etc." will be posted on the website. I have not located information showing that Commission meeting materials were also posted.

In 1999, a new website was launched and maintained at the PDC. As occurred in 1994, this launch was in partial response to a new law, ESSB 5931. That new law amended RCW 42.17.367, removing the requirement for the Commission to post "commission meeting schedules." However, it appears that many of the same items (such as

meeting agendas), plus others, were nevertheless posted by staff to the new website. The Commission enacted a policy that set goals for which reports filed with the Commission would be posted on the website per ESSB 5931, and when. These goals were later moved to a rule at WAC 390-14-026 (copy enclosed).² At this time, I cannot locate a similar policy or other overall directive from the Commission on what other items (beyond certain reports) should be posted to the website. From time to time, a Commissioner, or the Commission in meeting discussions, would suggest or direct other specific items to be posted to the website. See enclosed summary.

2000 - 2013. As best I can tell, beginning in September 2000, for the first time, some meeting items were posted (linked) with the agenda. This appears to have been a staff-level decision, or perhaps a staff decision in consultation with the Chair. It appears that the first time modification information was posted (linked) by staff was in August 2001. These posting decisions were consistent with the interest of the Chair at that time (Christine Yorozu), who wanted to use the website as a vehicle to promote interest in the Commission's work.

In 2010, a bill was introduced in the Legislature that would have required all agencies to post all meeting materials online with their agendas. It did not pass. However, the Legislature passed another bill concerning public records, finding that, "The internet provides for instant access to public records at a significantly reduced cost to the agency and the public. Agencies are encouraged to make commonly requested records available on agency web sites. When an agency has made records available on its web site, members of the public with computer access should be encouraged to preserve taxpayer resources by accessing those records online." Sec. 1, Ch. 69, Laws of 2010.³

In 2009 - 2011, the Commission discussed several times whether it would post all personal financial affairs reports (F-1s) online. F-1 reports were not in the category of reports the Commission had previously listed that it would post online in policy or in WAC 390-14-026. The Commission decided it would not post the F-1s, in part noting security and identity theft concerns, as well as other issues. However, the Commission recognized that partial F-1s that accompanied modification requests were posted online with the request. It determined not to change that process, but to notify modification requesters of that practice of posting F-1s along with modification requests.

In 2012, the Commission updated its public records rules to encourage records requesters to first check the PDC website before making a formal request. The Commission described that records provided on the PDC website have been disclosed. In the list of documents available on its website, the Commission listed meeting agendas, materials and minutes. WAC 390-14-011, WAC 390-14-045.

In April 2013, following consultation with the Chair and other staff, the Executive Director did not post a judge's F-1 online with his modification request due to a significant safety issue where the judge was reported by the media as being attacked at

² The rule lists the statutes governing filing certain reports with the Commission, and when those reports will be available on the website, or at the Commission office. Personal financial affairs reports, which are authorized under RCW 42.17A.700 -.710, are not in the list.

³ See notes following RCW 42.56.520.

his home by an unknown person. Instead, only his modification request was posted with the agenda, along with a staff cover sheet summarizing the request. The same process was used for other modification requesters that month, and since then.

Following Commission discussion of this decision in May, the modification posting process has been set for further discussion at the Commission's retreat.

Enclosures: Background of Delegations from the Commission to the Executive Director
History of Posting Commission Agendas & Agenda Materials on the PDC
Website
WAC 390-14-026 – Access Goals to Campaign and Lobbying Reports



Delegations of Authority from Commission to Executive Director: (1) Statute

RCW 42.17A.110(2):

The Commission may...

(2) Appoint an executive director and set, within the limits established by the *department of personnel under RCW 43.03.028, the executive director's compensation. *The executive director shall perform such duties and have such powers as the commission may prescribe and delegate to implement and enforce this chapter efficiently and effectively. The commission shall not delegate its authority to adopt, amend, or rescind rules nor may it delegate authority to determine whether an actual violation of this chapter has occurred or to assess penalties for such violations; ...*

** Now the Office of Financial Management.*

Excerpt from Executive Director Position Description Form¹ describing this statute:

The Commission is empowered by RCW 42.17.370(2) [now RCW 42.17A.110(2)] to appoint an executive director who:

shall perform such duties and have such powers as the commission may prescribe and delegate to implement and enforce this chapter efficiently and effectively. The commission shall not delegate its authority to adopt, amend, or rescind rules nor shall it delegate authority to determine whether an actual violation of this chapter has occurred or to assess penalties for such violations.

Statutorily, the Executive Director is proscribed from adopting, amending, or rescinding rules, determining actual violations of the law and assessing penalties. These duties must be performed by the Commission. Otherwise, the Commission is empowered to “prescribe and delegate” to the Executive Director such duties and powers necessary to “implement and enforce” the Public Disclosure Law “efficiently and effectively.”

Certainly the Executive Director’s authority is circumscribed by several important factors, including the Commission’s policies and directions, statute, and directives applicable to all state agencies, such as those from OFM [Office of Financial Management], the Auditor, and the Department of Personnel [now the Department of Enterprise Services]. However, the Executive Director must exercise a broad degree of discretion and latitude in dealing with a considerable number of day-to-day issues, ranging from answering press calls, hiring employees, deciding whether sufficient evidence exists to take a case to hearing, answering questions for guidance from filers, and authorizing purchases. The Executive Director is also expected to exercise judgment and expertise in making recommendations to the Commission about policies and priorities, rules, legislative proposals, and budget, each of which is based on a unique and complex set of factors and circumstances. The Commission also expects the Executive Director to exercise high-level oversight of efforts to develop, implement, and maintain information systems for electronic filing of disclosure reports, providing public access to filings, and the administration of the office.

¹ More information from Executive Director Position Description Form begins on page 4.



Delegations of Authority from Commission to Executive Director: (2) Rules

By rule, Executive Director:

Administrative Procedures

- Designates locations of meetings that need to be relocated from PDC office. WAC 390-12-020.
- Assists the Commission as necessary. WAC 390-12-040.
- Performs the following duties under general authority and supervision of the commission:
 - Act as records officer and administrative arm of commission
 - Coordinate the policies of the commission and the activities of all commission employees and others who perform ministerial functions for the commission
 - Act as liaison between commission and other public agencies. WAC 390-12-200.
- May conduct independent investigations to fully develop relevant facts needed for declaratory order & must present petitions for declaratory orders to commission at first meeting where it is practical to do so. WAC 390-12-250.

Enforcement Hearings

- Shall conduct initial review of complaints to determine whether they are obviously unfounded or frivolous, or appear on their face to have merit. WAC 390-37-060.
- Shall direct a formal investigation be conducted whenever initial review indicates possible material violation and/or lack of substantial compliance. Id.
- May request commission review and concurrence before proceeding with investigation that will require expenditure of substantial resources. Id.
- Shall initiate an adjudicative proceeding or provide report to commission when an investigation reveals facts that the ED has reason to believe are a material violation of chapter and do not constitute substantial compliance. Id.
- May issue subpoena during audit or investigation to any person who probably possess information which is relevant and material to audit or investigation. WAC 390-37-063.
- May dismiss complaint with concurrence of chair or chair's designee at any time prior to consideration by the commission, when complaint on its face or as shown by investigation, does not show reason to believe violation... and/or shows respondent is in substantial compliance. WAC 390-37-090.
- May negotiate, agree to terms of, and sign a stipulation as to facts, violation, and/or penalty. WAC 390-37-090.
- May sign orders on behalf of commission. WAC 390-37-100.
- May request prehearing conference to adjust pre-hearing schedule or if provisions are not adhered to by the person. WAC 390-37-136.
- Direct the pre-hearing submission of materials by parties. Id.
- Must send hearing notices for brief enforcement hearings. WAC 390-37-140.
- May sign decisions in brief enforcement hearings on behalf of presiding officer. Id.

Public Records

- May revise the public records copying fee schedule periodically as needed. WAC 390-14-030.
- Must evaluate and determine which declaratory orders to index & post on agency website. WAC 390-14-045.

Campaign Finance Reporting

- Must approve complete applications to change reporting options from mini to full, when received 30 or more days before election; and may only approve applications received less than 30 days before election when certain criteria are satisfied. WAC 390-16-125.

Lobbyist Reporting

- Is authorized to state in writing how all reportable information relative to a particular gathering shall be reported on Form L-2 whenever the application of the appropriate provisions of law is unclear to the reporting person, and this interpretation shall be reviewed and approved, modified or rejected by the commission at its next regular or special meeting. WAC 390-20-145.

Financial Affairs

- May exercise commission's right to reject amendatory forms and require a new statement of financial affairs at any time the amendments are confusing or create misunderstandings. WAC 390-24-020.
- Obtain lists of professional staff members with F-1 reporting requirements and post lists on website. WAC 390-24-160.

Hardship Exemptions/Reporting Modifications

- May cite relevant portions of record of reporting mod hearings that are conducted by ALJs when an applicant objects to the ALJ's proposed decision. WAC 390-28-060.

Fair Campaign Practices

- Must forward a copy of a "fair campaign practices code" complaint to subject of complaint within 24 hours, along with a request for a response to the complaint within 5 days from date of mailing; and must forward copy of response to complainant and to news media. WAC 390-32-030.



Delegations to /Responsibilities of Executive Director: (3) ED Position Description Form²

Position Objective

As the chief administrative officer of the Public Disclosure Commission, the Executive Director:

- Develops recommendations on interpretation and enforcement of the Public Disclosure Law, rule-making, agency budget, legislative proposals, and agency priorities for the Commission's consideration and decision.
- Carries forward and applies the Commission's policies and decisions.
- Oversees the work of the agency's staff, the performance of the agency's statutory and administrative functions, and office operations.
- Acts as agency spokesperson and liaison with the Governor's Office, Legislature, and other agencies and organizations.

Principal Responsibilities

Budget

- The Executive Director is responsible for developing the PDC's biennial budget requests and supplemental budget requests by identifying agency priorities and needs, making recommendations to the Commission, and then preparing the budget submission incorporating the Commission's decisions. The Executive Director is the contact person with OFM and the Legislature on the budget, advocating the PDC's request and answering questions.
- The Executive Director oversees agency spending to ensure that expenditures are within legislative appropriations and administrative allotments.

Legislation

- The Executive Director works with the Commission, staff and stakeholders to identify possible areas of legislative change. If the Commission decides that legislative change should be suggested to the Legislature, the Executive Director submits to the Governor's office agency request legislation encompassing the Commission's proposals. If the Governor's office approves the agency request legislation, the Executive Director finds sponsors in both chambers for the legislation, testifies in committee hearings and otherwise advocates the bill's passage, monitors amendments, supervises fiscal note preparation, and works with the Governor's office regarding final approval of the legislation.
- Annually, the Executive Director monitors 20 to 40 other bills relating to the Commission's jurisdiction, testifying and otherwise advocating passage or defeat of the bill if the Commission so instructs, and supervising fiscal note preparation.

² Current Position Description Form as of August 2013. Items bulleted for ease of reference.

Outreach

- The Executive Director is responsible for overseeing the creation of public information and training and informational materials for filers, the media, and public.
- The Executive Director acts as the chief agency liaison with the Attorney General's Office with regard to litigation, investigations, and enforcement cases, and supervises in-house legal counsel regarding policy development and advisory matters.
- The Executive Director acts as a resource on Washington law for the Federal Election Commission and other states' campaign finance and lobbying agencies.

Data Access and Management

- The Executive Director oversees the collection and retention of filed reports in such a way that ensures both their safety and their accessibility to the public.
- The Executive Director oversees the determination of what information from filings should be entered into the agency's database, considering public interest in the information and available agency resources.
- The Executive Director is responsible for overseeing the preparation of reports analyzing the information disclosed in filings so as to present such information to the public in a way that is meaningful and useful.
- The Executive Director is responsible for overseeing the development and implementation of a number of alternatives of varying levels of technological sophistication, whereby the public can access filings, databases, pre-formatted reports, analyses of data, and other materials prepared by the Commission.
- The PDC's Executive Director is responsible for approving the implementation of new technologies for electronic filing, providing public access to information held and developed by the PDC, document management, filer training, and office administration. This entails working with stakeholders and staff to determine their interests and needs.

Policy Development

- The Executive Director oversees the research, development, and drafting of agency policy positions, administrative rules, interpretations, and advisory opinions for presentation to the Commission. These recommendations may be made in response to specific questions or events, but the Executive Director must also proactively identify issues of concern, being cognizant of court decisions, legislation, the political environment, and other broad-based considerations. The Executive Director also identifies which requests may be handled by staff rather than the Commission, and oversees the rendering of staff advice.
- Once the Commission has acted to adopt a policy, rule, or opinion, the Executive Director is responsible for ensuring that all affected and interested persons, including the media, are informed and educated about such decisions, and that the decision is otherwise carried out and properly applied by staff.

Compliance

- The Executive Director oversees the performance of the PDC's investigative, audit, and enforcement activities. This includes monitoring the course of complex investigations and determining which complaints to take to enforcement hearing. The Executive Director acts as the agency's liaison with the Attorney General's office on enforcement cases which go to litigation.
- The Executive Director assists the Commission in the development of enforcement priorities and policies, and oversees the administration of the Commission's priorities and policies as well as the administrative processes and procedures governing investigative, compliance, and enforcement matters.

Daily Operations

- The Executive Director approves personnel policies, hires staff, oversees and evaluates staff members' job performance, and where necessary, takes corrective action. The hiring, evaluation, and discipline of management staff are done in consultation with the Commission. The Executive Director must ensure that personnel policies and employment actions are in accordance with federal and state laws and regulations.
- The Executive Director oversees acquisition of office space, equipment, services, and supplies and approves draft requests for proposals and contracts.
- The Executive Director is responsible for performing whatever duties are necessary for the efficient exercise of the office's daily operations.

Accountability

[This section discusses RCW 42.17.370(2). See information reprinted on page 1 of this memo.]

Planning (Tactical and Strategic)

- Long-term planning is typically done in conjunction with preparation of the biennial budget. The Executive Director is expected to formulate for the Commission's consideration, the priorities, needs, workload, and desires for the future. This involves developing a broad-based strategic plan, including a mission statement, goals and objectives and performance measures, as well as specific action items to carry out that plan.
- Once the Commission's budget proposal has been acted upon by the Governor/OFM and then the Legislature, the Executive Director must re-adjust those expectations in accordance with the actual funding that has been appropriated.
- While such long-term planning encourages the Commission to examine, in a broad-based way, how it intends to fulfill its mission in carrying out the intent of the voters in passing the Public Disclosure Law, short-term planning is also necessary to allocate existing resources based on current or foreseeable circumstances such as upcoming election cycles, filing deadlines, and pending caseload.
- The Commission must also, however, maintain flexibility to accommodate incoming requests for advice and complaints, new legislation and judicial decisions. While, in a general sense, some of these matters can be planned for, the Commission and Executive Director must be prepared to immediately re-prioritize the agency's workload.



Examples of Other Delegations of Authority to Executive Director: (4) Commission Action at Meetings

- At its meetings, the Commission has provided other directives over the years to its Executive Directors, such as to:
 - initiate the rulemaking procedures,
 - seek stakeholder input on an issue,
 - set or change meeting dates,
 - provide input to the Legislature,
 - work with the Attorney General’s Office or other agencies on a matter,
 - work with the Chair on a matter,
 - include a matter on or discussion topic on an upcoming agenda, and,
 - many other examples.

- Several years ago the Commission formerly authorized the Executive Director to sign orders on its behalf via a motion in a particular case; this authority was later moved to a rule.

- In 1997, the Commission asked the AGO to provide a monthly summary of litigation in its meeting materials, and update the Executive Director on significant developments in cases, and the Executive Director should “pass that information along” to Commissioners. (In 2007, the General Counsel position was created at the PDC, and that litigation information now typically is provided by the General Counsel and/or AAG.)



History of Posting Commission Agendas & Materials On PDC Website

Year	Action
1994	<ul style="list-style-type: none"> • Legislature requires Commission to design system for electronic filing by January 1, 1995. 2ESSB 6426 (RCW 42.17.367) [later codified to RCW 42.17A.050]. Other documents to be available “for the internet system” and the PDC’s “electronic bulletin board system” include the “commission meeting schedules” and reports filed with the PDC. Findings state that providing citizen electronic access to public documents will allow increased citizen involvement in state policies and empower citizens. Meeting materials not required to be posted. • Minutes show staff reports to the Commission on the progress on implementing ESSB 6426, through server at the University of Washington. Minutes show staff reports to Commission that agendas of upcoming meetings, minutes, statutes, rules, “etc.” will also be posted on website beginning in May.
1995	<ul style="list-style-type: none"> • Legislature includes more references in RCW 42.17 to allow electronic filing of reports. ESSB 5684.
1996-1998	<ul style="list-style-type: none"> • Commission receives appropriation for technology to improve customer service. Electronic filing software development begins; computer terminals for reception area (lobby) purchased. • Minutes show staff reports to Commission that information in 1996 Election Financing Fact Book is also on website. • Annual Report shows other materials are available on website, including instruction manuals, press releases, contribution/expenditure reports, lobbyist directories, fact books, and downloadable database. • PDC enters into contracts with SDR for acquisition of electronic filing system, and to design a new Internet website.
1999	<ul style="list-style-type: none"> • New website launched. PDC staff takes over maintenance from SDR. (Website no longer at UW). • ESSB 5931 enacted. Amends RCW 42.17.367 [later codified to RCW 42.17A.050] to remove reference to website posting of “commission meeting schedules.” Requires online access to reports filed with Commission, and Commission is to set goals for reports to be available electronically. “In addition, the commission shall attempt to make available via the web site other public records submitted to or generated by the commission that are required by this chapter to be available for public inspection.” Directs JLARC audit. Provides appropriation to implement bill. Agendas, and agenda materials, are not required by RCW 42.17 to be posted on website. • Minutes show Commission adopts online access goals for reports filed with PDC (PDC Policy 99-01, later moved to rule at WAC 390-14-026). Minutes reviewed to date do not reflect Commission specific discussion regarding posting other records. These postings appear to be staff decisions. • Agendas most likely posted on new website (copies of website from 1999 no longer available).
2000	<ul style="list-style-type: none"> • Agendas posted on website. Agendas only are posted (no materials) in early months; some agenda materials first linked on website with September 26, 2000 agenda, but not modification materials. Minutes reviewed to date do not reflect Commission discussion regarding this agenda posting; appears to have been staff decision. Selected agenda materials continue to be linked from 2000 onward, at discretion of staff.¹ • JLARC issues audit of PDC. Provides history of PDC technology use and implementation of ESSB 5931.

¹ Examples of other types of other agenda materials that typically have been posted include: Rules materials (memos, drafts, proposed rules); interpretation materials (memos, drafts); hearing materials (memos, administrative charges and responses, final reports of investigation); strategic plans and proposed updates. Examples of other types of agenda materials that typically have not been posted include: Staff reports; draft minutes; budget updates; extra meeting materials assembled after date of mailing; legislative update memos prepared after mailing; copies of pending legislation; PowerPoint or similar presentations or demonstrations using overheads or slides, including IT demonstrations or division reports; calendaring items (used to set the next year’s meeting dates, such as copies of calendars); materials for staff or Commissioner recognition; Commission retreat materials.

	<p>Recommends PDC posting a FAQ on PDC website.</p> <ul style="list-style-type: none"> In 2000-01, CITO Michael Smith and other staff continue to provide presentations to the Commission on the agency's website, imaging system, database developments and query system, number of hits on the website, electronic filing system developments, and similar matters.²
2001	<ul style="list-style-type: none"> July 1, 2001 – Christine Yorozu becomes Chair. Staff recalls that she provided several ideas and suggestions to staff of items to post on the website generally, to increase transparency and promote interest in the Commission's work.³ August 28, 2001 - First time (?) modification request materials posted with agenda. Minutes reviewed to date do not reflect Commission discussion regarding this posting; appears to have been staff decision.
2009	<ul style="list-style-type: none"> February 26, 2009 – Commission discusses posting all F-1s on the website, but decides not to change process for persons seeking copies of F-1s to contact PDC to make a request for these reports. October 22, 2009 – Commission discusses F-1 filer's objection to her F-1 being placed on the PDC website with the agenda linking her modification request and materials. Commission discusses removing F-1 forms from being linked with future modification requests; however, determines that until future discussion, forms would remain posted with request & requesters would be informed of this process.
2010	<ul style="list-style-type: none"> Proposed legislation was introduced but did not pass (SB 6268) that would have amended Administrative Procedure Act to require boards & commissions to post all meeting materials on their websites. February 25, 2010 - Commission again discusses posting all F-1s on website. Due to some concerns, Commission decides not to change current procedures. Legislature enacts a public records act bill, finding in part that, "Agencies are encouraged to make commonly requested records available on agency web sites. When an agency has made records available on its web site, members of the public with computer access should be encouraged to preserve taxpayer resources by accessing those records online." 2010 c 69 § 1.
2011	<ul style="list-style-type: none"> October 27, 2011 – Commission again discusses posting all F-1s on website. Decides not to change procedures.
2012	<ul style="list-style-type: none"> Legislature amends Open Public Meetings Act to require agendas of special meetings to be posted on an agency's website 24 hours before meeting (SSB 5355). No similar requirement enacted for regular meetings, or for any meeting materials. Commission amends its public records rules. Adopts rules encouraging requesters to check records on its website, before making a formal records request. Lists Commission agendas, materials and minutes as records posted on website, among many other examples. WAC 390-14-011, 390-14-045.
2013	<ul style="list-style-type: none"> April 25, 2013 – F-1 forms not linked on website with agenda listing this month's modification requests, per staff decision in consultation with Chair (application & staff cover sheet only posted). May 22, 2013 – Commission discusses whether to post F-1 forms with future modification requests and determines that until further discussion could occur at retreat, modification requests would continue to be posted with the application & cover sheet only. August 22, 2013 – Retreat agenda item: discuss postings of information on PDC website.

² These types of presentations continue through present day. While the Commission has not typically taken formal action to suggest changes or updates to the website, individual members have provided input and suggestions at Commission meetings or at other times in conversations with staff, and from time to time the Commission has provided other directives. For example, on April 25, 2000, not too long after the current website began operation, the Commission voted to include a particular interpretation of a lobbying statute on the website and voted to begin formal rulemaking on the same issue. (As of 2013, all Commission interpretations, and rules, are posted on the website.) See also the 1999 discussion regarding access goals for reports posted on the website, the 2001 suggestions by Chair Yorozu, and the 2009-2011 discussion regarding posting F-1s.

³ Minutes from June 28, 2001 show Commissioner Yorozu suggested providing a link to the Seattle Ethics and Elections Commission webpage on the PDC's webpage. Staff recalls that Chair Yorozu provided other suggestions informally to staff after she became chair on July 1, 2001. The August 28, 2001 meeting minutes show Chair Yorozu reported that staff is working on "new communication strategies." At this time, staff has not located Commission meeting minutes reflecting a formal discussion or decision by the Commission on what "new communication strategies" should include.

WAC 390-14-026 Access goals to campaign and lobbying reports.

The commission sets the following goals for access to all reports, copies or reports, or copies of data or information included in reports, filed under RCW 42.17A.205, 42.17A.225, 42.17A.235, 42.17A.255, 42.17A.265, 42.17A.600, 42.17A.615, 42.17A.625, and 42.17A.630.

(1) In January of 2001, when reports are filed with the commission, staff will endeavor to make the report available as follows:

(a) Submitted by electronic means:

(i) Available in the commission office within two business days and;

(ii) Available on the commission web site within four business days.

(b) Submitted on paper:

(i) Available in the commission office within four business days and;

(ii) Available on the commission web site within seven business days.

(2) In January of 2002, when reports are filed with the commission, staff will endeavor to make the report available as follows:

(a) Submitted by electronic means available in the commission office and on the commission web site within two business days and;

(b) Submitted by paper, available in the commission office and on the commission web site within four business days.

[Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-14-026, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370(1). 00-22-058, § 390-14-026, filed 10/27/00, effective 11/27/00.]

Retaining Special Legal Counsel

General Topic: Retaining Special Legal Counsel

Approved by: Commission

Approved for Commission

Date Approved: June 22, 2004

References: WAC 390-12-210 and RCW 42.17.380

INTRODUCTION:

This policy sets forth conditions under which the agency may exercise its authority to employ special legal counsel pursuant to RCW 42.17.380(2).

SPECIAL COUNSEL RETAINED

1. The agency will retain an attorney who is not a regular employee of the Office of the Attorney General ("special counsel") when the resolution of an enforcement matter necessitates legal counsel and:
 - a) the respondent is the attorney general or an employee of the Attorney General's Office,
 - b) the respondent is a candidate for attorney general, or
 - c) the Attorney General's Office declines to provide assistance or to proceed in the manner deemed appropriate by the agency and the agency wishes to proceed with the enforcement matter.

2. The agency may retain an attorney who is not a regular employee of the Office of the Attorney General ("special counsel") when a matter necessitates legal counsel and any of the following circumstances arise:
 - a) the Attorney General's Office declines to take action that the agency believes must be taken,
 - b) the subject of an enforcement matter is so closely connected with the attorney general or the Attorney General's Office that employment of special counsel would preserve the appearance of fairness and/or avoid conflicts of interest that are otherwise unavoidable through screening or other similar mechanisms,
 - c) the complainant or a witness is the attorney general or someone acting on the attorney general's behalf;

- d) special expertise is needed that is not available within the Attorney General's Office,
- e) a matter arises in a jurisdiction in which a member of the Attorney General's Office is not licensed to practice and local counsel cannot be obtained through the Attorney General's Office, or
- f) the best interests of the agency require special counsel.

Method of Selection

The executive director is delegated the authority, in consultation with the chair, to retain special counsel.

The executive director shall comply with the personal service contract requirements in chapter 39.29 RCW and the personal service contracting procedures established by the Office of Financial Management (OFM).

The method of selecting special counsel will depend on the specific nature of the legal services needed. When circumstances permit or require, a request for proposal process will be used. Circulation of the request for proposals will depend on the nature of the expertise sought. However, because of the nature of expertise needed or timing, a sole source process may be used consistent with law.

Special counsel serves at the pleasure of the agency. All appointments of special counsel will include an appointment letter indicating the terms and conditions of appointment and outlining the services to be provided. The contract will specifically include a term, hourly rate, itemized billing, maximum compensation, reimbursement of expenses consistent with OFM guidelines, and the disposition of any products or records developed. No contingent fee or similar arrangements will be used. Legal services will be managed by the assistant director in consultation with the executive director, unless circumstances warrant otherwise.

**ATTACHMENT TO PDC 2007-09 STRATEGIC PLAN UPDATE –
FOR DISCUSSION AT FEBRUARY 2008 COMMISSION MEETING**

LONG-TERM LEGAL STRATEGY AND PRINCIPLES

The Public Disclosure Commission's mission is (a) to provide timely and meaningful access to information about the financing of political campaigns, lobbyist expenditures, and the financial affairs of public officials and candidates, and, (b) to ensure compliance with and equitable enforcement of Washington's disclosure and campaign finance laws.

The agency's long-term principles are likewise to focus its resources, including its legal resources, in order to enable access to that information and to allow for compliance with and equitable enforcement of the laws. As a legal strategy, this will be done in the following ways:

- 1. Keep agency prepared to enforce and implement its statutes, and respond to campaign finance and related court decisions, or legislative changes, while maintaining its mission.**
 - The General Counsel will identify relevant cases of interest to the Commission at the state and national level. The General Counsel will assess potential impacts on state statutes and rules.
 - The General Counsel will monitor cases of interest to the Commission, or where the Commission or the state is a party, and submit a written status report at the Commission meetings. Updates and status reports on enforcement cases will be provided by the Senior Assistant Attorney General.
 - Management Staff, including the General Counsel, will provide technical assistance as requested to legislative staff or legislators, on proposed changes to RCW 42.17.
 - Management Staff, including the General Counsel, will identify where amendments to RCW 42.17 may be necessary. The Senior Assistant Attorney General may also identify amendments necessary as the result of enforcement case court decisions.

- 2. Keep agency focus on increasing compliance without enforcement action where possible, or through alternative dispute resolution mechanisms where appropriate, in order to devote staff, Commission and legal resources on the more complex cases.**
 - As identified in Strategic Plan Goal 1 and its Action Items, staff and the Senior Assistant Attorney General will assist in this effort.
 - As provided in WAC 390-12-050(8), staff will concentrate on assisting people in meeting their obligations under the law in the hopes of fulfilling the purposes of the act without having to resort to enforcement actions, where possible. Examples include trainings,

reminders regarding filing dates, requests initiated by PDC staff to filers to submit required information where staff or the public notice it is absent, RSS feed option for updates on materials posted on Commission website, instructional materials posted online including videos, PDC staff work with associations to have them remind their members to file F-1s, staff initiated audits, etc.

- PDC staff will continue to utilize mechanisms to assess complaints, assign resources and track them based upon category of complexity (routine, moderately complex, complex), including 45-day letters.
- As provided in WAC 390-37-090, the parties in enforcement cases will continue to be encouraged to engage in alternative dispute resolution mechanisms and informal settlement where appropriate in enforcement cases. These typically take the form of stipulations presented to the Commission for approval.
- However, staff will bring such actions to the Commission without fear or favor where there is evidence of a material violation of chapter 42.17 RCW and/or lack of substantial compliance. Such actions will be vigorously pursued.

3. Support litigation efforts that foster the agency's mission of disclosure and compliance with the agency's laws.

- Pursue enforcement cases in hearings and in the courts to vigorously defend the disclosure provisions, and to vigorously defend the agency's and state's efforts to ensure compliance with the laws in these cases. The Senior Assistant Attorney General will provide lead legal counsel in these matters, in coordination with the General Counsel as needed in court cases.
- Ensure other efforts, outside of enforcement cases that challenge the disclosure and other statutes and rules implemented by the agency are vigorously opposed. The General Counsel will supervise these activities in coordination with the Senior Assistant Attorney General as needed.
- Support efforts to provide or sign on to amicus briefing where consistent with agency's mission of disclosure and ensuring compliance with the laws, as determined on a case by case basis, and within available resources. Coordination will occur as needed through the General Counsel and the Senior Assistant Attorney General, and Attorney General's Office amicus coordinator(s), and depending upon the process through which the amicus request is made (example, via the National Association of Attorneys General, COGEL, etc.).
- Management staff will assist other PDC staff in activities that will reduce efforts and may enhance outcomes on collection of unpaid penalties following enforcement cases (e.g. creation of collection

database), and the Senior Assistant Attorney General will identify efficiencies/improvements on Attorney General's Office filing procedures for collection cases forwarded to that office.

- 4. Keep agency rules and interpretations current, to better assist filers, the public, the Commission, and staff.**
 - The General Counsel, in conjunction with Management Staff, will assist the Commission in identifying agency rules that need updating, and in writing the updates.
 - The General Counsel will review interpretations for current validity, and help determine with other staff if some interpretations should be converted to rules, amended or repealed.

- 5. Keep agency prepared to respond to formal requests for information (outside of online database queries), such as public records requests or discovery, to better assist the Attorney General's Office, and staff.**
 - The General Counsel will develop a plan and formal policies and procedures for responding to discovery, electronic discovery, requests for production/interrogatories, public records requests, etc., for review by the Executive Director. The General Counsel will work with the Attorney General's Office and the Senior Assistant Attorney General to determine any best practices.
 - The General Counsel will assist in updating the agency's Records Retention procedures and provide training to agency staff.

- 6. Keep agency processes and policies current to reduce inefficiencies and to better assist the public, the Commission, the Senior Assistant Attorney General and staff.**
 - As requested, the General Counsel will review general procedures, policies or forms to determine improvements, and for compliance with statutes and rules. The General Counsel may suggest changes to increase the quality and efficiency of the enforcement work, modification request procedures, or other procedures. Example: F-1 modification request procedures, standard hearing notices, etc.

7. Keep agency resources focused on the agency mission by reducing agency risk in other areas not directly related to disclosure, campaigns, lobbying, etc.

- The General Counsel will assist staff to address items identified in June 2006 Enterprise Risk Management Maturity Model and prepare a timeline for future activities.
- The General Counsel will coordinate with Attorney General's Office for additional training or other assistance as needed by the agency, such as related to responding to a tort claim.
- The General Counsel will assist in identifying other risk management activities, and implementing directives identified by the Governor's Office, OFM, etc.
- The General Counsel will provide state ethics law training, and training on other areas of the law as requested or needed for Commissioners and/or staff.