



PUBLIC DISCLOSURE COMMISSION

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To: Members, Washington State Public Disclosure Commission
From: Lori Anderson, Communications & Training Officer
Date: October 13, 2016
Re: Rule Making – Planning & Preparation | Enforcement Rules

The Commission recently directed staff to begin rule making to establish a penalty schedule for brief enforcement hearings to address violations of laws and rules beyond what the current penalty schedules address. Additional penalty schedules give more respondents the opportunity to enter into statements of understanding and brings uniformity to penalty assessments.

At its regular September 2016 meeting, the Commission expressed interest in adopting a point-based schedule that would allow for adjustments based on defined aggravating and mitigating circumstances. A draft point-based schedule was sent to stakeholders with an invitation to comment. All responses were supportive.

As you know, October 31 is my last day with the Commission. Before then, I hope to complete the drafting stage for this rule and other planned enforcement rule updates. You will be asked to approve draft language during the October 27, 2016 regular meeting. If the Commission proceeds with approving the draft language for a new penalty schedule, setting the base penalty amount and point values for the aggravating and mitigating factors may take a fair amount of time. To give you time to think about it before the regular meeting, staff is offering you a preview of the draft language that you will be asked to approve later this month. We plan to have two possibilities for you to consider:

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

Attachments

NEW

WAC 390-37-143 Brief enforcement hearings (adjudicative proceeding) – Penalty schedule.

(1) (a) The presiding officer may assess a penalty up to \$1,000 upon finding a violation of RCW 42.17A or Title 390 WAC. All or a portion of an assessed penalty may be suspended under the conditions to be determined by that officer.

(b) The penalty will be calculated using a base penalty amount adjusted by existing aggravating and mitigating factors to be determined by the presiding officer. Expressed as a formula:

$$\text{Assessed penalty} = \text{Sum of aggravating factor points} - \text{Sum of mitigating factor points} \times \text{Base penalty amount}$$

(i) Base amount:

- Base amount for the first occurrence is \$_____.
- Base amount for the second occurrence is \$_____.
- Base amount for the third occurrence is \$_____.

The first occurrence is the first time a respondent is found in violation of a statute or rule in a consecutive five-year period. The respondent's second or third violation of the same statute or rule within a consecutive five-year period of the first violation will be deemed the second or third occurrence, respectively.

(ii) Aggravating factors and points:

Point Value	Aggravating Factor
per report	Late or incomplete report
	Failure to file electronically
	Respondent has previous experience as a candidate or campaign officer
	Respondent found in violation of RCW 42.17A or Title 390 WAC in last five years, irrespective of the campaign
	Other campaign officers found in violation of RCW 42.17A or Title 390 WAC in last five years
	Exceeding contribution limits
	Exceeding mini reporting thresholds
	Political advertising: violation of any RCWs 42.17A.320 – 42.17A.330
	Political advertising: violation of RCW 42.17A.335
	Political advertising: violation of RCW 42.17A.345
	Use of public facilities to assist a campaign for election or promote a ballot measure
	Respondent owes outstanding penalties from previous enforcement action.

(iii) Mitigating factors and points:

Point Value	Mitigating Factor ↓
	Corrective action completed no later than 7 days after respondent learns of allegation or action taken to prevent recurrence
	Noncompliance occurred more than six months before election or other insignificant public impact
	Personal / Family emergency or illness
	No prior violations
	Lack of campaign experience
	An error at the commission, including a communication or filing system error, or with third party software contributed significantly to the late or incomplete report.

(c) The presiding officer may direct a matter to the full commission if the officer believes one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission

(2) Examples: The following is a nonexclusive list of typical violations and the resulting penalty calculation:

(a) Late reporting ...

(b) Lack of sponsor identification ...

more ...

Option A

NEW

WAC 390-37-143 Brief enforcement hearings (adjudicative proceeding) – Penalty schedule.

(1) (a) The presiding officer may assess a penalty up to \$1,000 upon finding a violation of RCW 42.17A or Title 390 WAC. All or a portion of an assessed penalty may be suspended under conditions to be determined by the presiding officer.

(b) The presiding officer will apply the penalty schedules at WACs 390-37-155 through 390-37-175 for a single violation of failure to electronically file, failure to timely file a personal financial statement, failure to timely file a candidate registration and personal financial statement, failure to timely file a monthly lobbyist report, or failure to timely file an annual lobbyist employer report. All other penalties will be calculated using a base penalty amount of \$_____ adjusted by existing aggravating and mitigating factors to be determined by the presiding officer. Expressed as a formula:

$$\text{Assessed penalty} = \text{Sum of aggravating factor points} - \text{Sum of mitigating factor points} \times \text{Base penalty amount}$$

(i) Aggravating factors and points:

Point Value	Aggravating Factor
per report	Late or incomplete report
	Failure to file electronically
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	Political advertising: violation of RCW 42.17A.345
	Use of public facilities to assist a campaign for election or promote a ballot measure
	Respondent owes outstanding penalties from previous enforcement action.

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Point Value	Mitigating Factor
	Corrective action completed no later than 7 days after respondent learns of allegation or action taken to prevent recurrence
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(c) The presiding officer may direct a matter to the full commission if the officer believes one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(2) Examples: The following is a nonexclusive list of typical violations and the resulting penalty calculation:

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(b) Lack of sponsor identification ...

more ...