



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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TO: Commissioners

FROM: Tony Perkins, Compliance Officer

DATE: August 18, 2016

SUBJECT: Update - Use of Alternative Responses to Minor and Technical Alleged Violations

On January 4, 2016, new and amended Commission rules went into effect providing for alternatives to formal investigations or hearings in cases of minor or technical alleged violations. Since that time, PDC Compliance and Enforcement staff have begun implementing the new tools, and tracking their use. The cases resolved through an alternative response are detailed in the attached table, and discussed below.

Use of Written Warnings – WAC 390-37-060(1)(b)

Following the direction of prior Commissions, staff has historically used written warning letters to resolve minor alleged violations of political advertising requirements. With formal warnings now written into the Commission's enforcement rules, staff has used the tool to resolve 22 complaints involving minor or technical violations of a broader range of requirements, for example the contribution and expenditure disclosure requirements of RCW 42.17A.235 and .240, the personal financial affairs disclosure requirements of RCW 42.17A.700, and the prohibition in RCW 42.17A.555 against the use of public facilities to assist a candidate's campaign.

In at least one case this year, a respondent who has previously received a warning under WAC 390-37-060(1)(b) was later named in another complaint. Where the later complaint indicates even minor or technical violations, taking into consideration the factors for alternative responses provided in WAC 390-37-061, staff has adopted the posture that the respondent does not qualify for an additional warning. Accordingly, we have prepared such cases for enforcement. Staff would appreciate any feedback the Commission cares to offer on this use of the formal warning process.

Statements of Understanding in Lieu of Hearing – WAC 390-37-142(3)(a)

In three cases this year, after issuing a hearing notice for a brief adjudicative proceeding, staff accepted a statement of understanding and penalty payment in order to resolve the violation and cancel the hearing. The process described under WAC 390-37-142(3) requires that a penalty specified by the PDC's Executive Director in order to cancel a brief hearing must be in accordance with the penalty authority of WAC 390-37-140 and the brief enforcement hearing penalty schedules of chapter 390-37 WAC. In the three cases at issue, no penalty schedule existed for the alleged violations: C-6 Independent Expenditure/Electioneering Communication disclosure (RCW 42.17A.260, .305), use of public facilities in election campaigns (RCW 42.17A.555), and contribution limits (RCW 42.17A.405). Accordingly, staff contacted the presiding officer to obtain permission to accept penalty payments that were within the brief enforcement penalty authority, and in staff's view, in line with comparable enforcement history.

The use of statements of understanding to resolve violations that would otherwise require a brief hearing could be streamlined to lessen the need for the presiding officer's involvement. For example, the Commission could consider whether additional brief enforcement penalty schedules are warranted, to cover areas of law for which no penalty schedule exists.

Lori Anderson reports that in the two years ending in March 2016, thirteen such cases were resolved through a brief hearing. For the most part, those cases involved a candidate's failure to register and disclose contribution and expenditure activity under RCW 42.17A.205, .235, and .240. The cases also involved the failure to disclose C-6 Independent Expenditure/Electioneering Communication activity, the use of public facilities in election campaigns, and the failure to comply with public agency lobbying disclosure requirements.

Deferred Enforcement; other Approved Alternative Responses

Staff is actively reviewing the deferred enforcement process outlined in WAC 390-37-075 as a possible resolution to several current formal investigations. The process requires staff to negotiate with the respondent concerning the terms of the deferred enforcement, and seek the concurrence of the chair or the chair's designee for the resolution of the case through deferred enforcement.

Finally, staff has not yet recommended the complaint publication process outlined in WAC 390-32-030 as the appropriate resolution of any complaints received since the amended rule went into effect. In order to qualify for resolution through the complaint

publication process, a complaint must be processed within ten business days of receipt, or eight days prior to the date that ballots are mailed to voters, whichever is earlier. As complaints are received, staff is attentive for cases that would be a good fit.

Attachments:

Cases Resolved through Alternative Responses – January 4 – August 18, 2016

**Cases Resolved through Alternative Responses
January 4 – August 18, 2016**

Case No	Respondent	Complainant	Subject	Date Opened	Date Closed	Resolution
13-097	Saundra Hill (Pasco SD Officials)	Roger Lenk	Pasco School District Officials - Alleged violation for use of public facilities to assist a candidate's campaign or to promote or oppose a ballot proposition.	2013-06-10	2016-02-12	Statement of Understanding in lieu of Hearing
15-053	Vancouver Vitality	Marsha Manning	Vancouver Vitality - Alleged violation of RCW 42.17A.260 and .305 for failure to timely file C-6 reports of Independent Expenditure political advertising and Electioneering Communications.	2013-10-22	2016-04-22	Statement of Understanding in lieu of Hearing
1946	Mark Nichols	Will Payne	Mark Nichols - Alleged violation of RCW 42.17A.405 for spending general election-designated contributions for the primary election in a manner that exceeded contribution limits.	2014-08-20	2016-03-16	Statement of Understanding in lieu of Hearing
1266	Neighbors For Shannon	William Dow	Neighbors For Shannon - Late C-6 Report	2015-11-02	2016-01-04	Resolved with Written Warning
1261	Charles Richard Tyson	Pam Carter	Charles Richard Tyson - Missing Schedule A on C-4 Reports	2015-11-02	2016-01-05	Resolved with Written Warning
1337	Jason Chinchilla	Matt Loschen	Chinchilla, Jason - Allegations of violating RCW 42.17A.235, .240 reporting improperly, not electronically filing reports (Nov 2015)	2015-11-05	2016-04-07	Resolved with Written Warning
1462	Recall Mark Lindquist	Nic Van Putten	Committee to Recall Mark Lindquist - Alleged violation of RCW 42.17A.235 and .240	2015-11-16	2016-02-11	Resolved with Written Warning
1461	Envision Worker's Rights PAC	Michael Cathcart	Envision Workers Rights PAC: Alleged violation(s) of RCW 42.17A.235, .240 and .320 by a political committee supporting a local 2015 Spokane ballot proposition.	2015-11-16	2016-02-25	Resolved with Written Warning
1555	Rocky Walker	Ray George, Kay George	Walker, Rocky - Alleged violation of RCW 42.17A.320, .335(1)(a) (sponsor ID, false political advertising)	2015-11-24	2016-04-19	Resolved with Written Warning
2160	Tom McCarthy (15-077)	Michelle L. Franklin-Wilson	McCarthy, Tom - Alleged violation of RCW 42.17A.235, .240 failing to report contributions/expenditures (Sept 2015)	2016-01-12	2016-04-25	Resolved with Written Warning
2205	So. Kitsap School Supporters	Larry L. Mann	South Kitsap School Supporters - Alleged violation of RCW 42.17A.235 and .240	2016-01-14	2016-02-10	Resolved with Written Warning
2486	Linda Kochmar	Mina Mercer	Alleged violation(s) of RCW 42.17A.235 and .240	2016-01-29	2016-02-05	Resolved with Written Warning
3168	Kim Wyman	Amy Bowhay	Wyman, Kim - Alleged violation of RCW 42.17A.560 fundraising during session freeze (Feb 2016)	2016-02-22	2016-07-13	Resolved with Written Warning
3204	Tim Probst	Mike Tiufekchiev	Tim Probst, Southwest Washington Electricians PAC 48, IAAF Local 452 - Alleged violations of RCW 42.17A.405(2)	2016-02-23	2016-03-11	Resolved with Written Warning
4064	Betsy Tainer	James Baldes	Tainer, Betsy - Alleged violation(s) of political advertising and political committee reporting (April 2016)	2016-04-04	2016-04-15	Resolved with Written Warning
4931	Bill Bryant	Jaxon Ravens	Bryant, Bill - Alleged violation(s) of RCW 42.17A.700 for failure to report financial affairs information	2016-05-04	2016-06-06	Resolved with Written Warning
5525	Rudolph Guidry, Sean Chavez	Thomas Rasmussen	Guidry, Rudolph - Alleged violation of RCW 42.17A.555 for use of public resources at campaign fundraiser.	2016-05-31	2016-06-08	Resolved with Written Warning
5680	Tina Podlodowski	Austin Morrison	Podlodowski, Tina - Alleged violations of RCW 42.17A.235 and .240 for failure to report campaign contributions	2016-06-07	2016-07-07	Resolved with Written Warning
5746	Carole Wagner	Mike Tiufekchiev	Active in Democracy - Alleged violation(s) of RCW 42.17A.235 and .240 for failure to report contributions and expenditures	2016-06-09	2016-06-22	Resolved with Written Warning

**Cases Resolved through Alternative Responses
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6560	Dick Muri, Mike Winkler	Mina Mercer	Muri, Dick & Winkler, Mike - Alleged violation of RCW 42.17A.320 for failing to include party preference on mailer	2016-07-13	2016-07-22	Resolved with Written Warning
6608	Carolyn Edmonds	Pam Roach	Edmonds, Carolyn - Alleged violations of RCW 42.17A.235 and .240 for failing to report campaign expenditures.	2016-07-14	2016-07-21	Resolved with Written Warning
6650	Adam Pomraning	Bill Berkman	Pomraning, Adam - Alleged violation(s) of RCW 42.17A.235 and .240 for failure to report campaign contributions and expenditures.	2016-07-15	2016-07-21	Resolved with Written Warning
6656	William Jenkin	William Berkman	Jenkin, William - Alleged violation(s) of RCW 42.17A.235, .240, and .245 for failure to report campaign contributions and expenditures, and failure to report electronically.	2016-07-15	2016-07-21	Resolved with Written Warning
6815	Move Clark County Forward	Tim Carrier	Move Clark County Forward - Alleged violation of RCW 42.17A.320 for failure to include party preference on a mailer.	2016-07-20	2016-07-26	Resolved with Written Warning
6859	CORE	Elizabeth Hallock	Canna Core - Alleged violation of RCW 42.17A.205 for failing to register as a political action committee.	2016-07-21	2016-07-26	Resolved with Written Warning