

# Update - Alternative Responses to Non- Compliance for Minor Violations



STATE OF WASHINGTON  
**PUBLIC DISCLOSURE COMMISSION**

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TO: Commissioners

FROM: Tony Perkins, Acting Assistant Director

DATE: April 16, 2015

SUBJECT: Strategic Plan Action Item Update — Alternative Responses to Non-Compliance for Minor Violations

### **Stakeholder Work**

Following the Commission's March 23, 2015 meeting, staff has continued preparations for possible rule making to provide for additional or expanded alternative responses to non-compliance for minor violations.

Our first step was to conduct stakeholder work, using our Web site, Facebook page, and email stakeholder list to solicit participation in an online survey. The survey was conducted through SurveyMonkey beginning on April 8, 2015, and will be open through April 22, 2015. As of the date of this memo, approximately 130 participants have taken the survey. In addition, staff has received a small number of individual comments via email. Staff will provide the full results of the survey and the individual responses with the Commission's extra meeting materials.

The online survey concerns a particular topic of discussion from the Commission's March 23, 2015 meeting: the possible expanded use of the Fair Campaign Practices Code complaint process (WAC 390-32-030) as an alternative to the adjudication of certain alleged violations before the Commission.

### **Commission Direction on Possible Rule Making**

Based on the feedback received to date, survey participants appear divided on the question of expanding the use of the Fair Campaign Practices Code complaint process. However, a significant proportion of survey respondents believe that speedy resolution of a complaint concerning minor violations is more important than a thorough, deliberative investigation, and that public access to a complaint and its response soon after the complaint is made is more important than Commission staff vetting and commenting on the complaint's merits. Accordingly, on April 23, 2015, staff will seek the Commission's approval to prepare proposed rule language to amend or supplement WAC 390-32-030.

The expanded use of the Fair Campaign Practices Code complaint process is only one tool the Commission considered at its March meeting as a possible alternative response to non-compliance. At the April meeting, staff will seek the commission's approval to begin rule making to:

- Provide the criteria and considerations for alternative responses to non-compliance;
- Describe available alternative responses to non-compliance, and the relevant processes;
- Describe, in general terms, alternative responses in addition to the stipulations and informal settlements discussed in current rules;
- Provide for a description, in a respondent's notice of complaint, of any alternative response issued as of the date of the notice;
- Provide for alternative responses without the concurrence of the chair or the chair's designee, in accordance with the process provided by the Commission's amended rules;
- Provide for statements of understanding and notices of correction, in addition to the alternative dispute mechanisms discussed in current rules;
- Clarify that, following receipt of a staff report concerning alleged violations, the Commission may also direct staff to issue an alternative response in accordance with the Commission's rules;
- Provide the authority of the presiding officer to assess a penalty higher than \$500 at brief hearings; and
- Establish procedures for deferred enforcement as an alternative response to non-compliance.

By the April 23, 2015 meeting, Lori Anderson will file the preproposal statement for rule making on alternative responses to non-compliance so that staff may proceed based on the Commission's direction.

### **Attachments**

For the benefit of Commissioner Asay, who was not present at the March 26, 2015 meeting, staff's March 19, 2015 memo concerning possible alternative responses to non-compliance is attached.



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TO: Commissioners

FROM: Tony Perkins, Acting Assistant Director

DATE: March 19, 2015

SUBJECT: Strategic Plan Action Item — Alternative Responses to Non-Compliance for Minor Violations

#### **The Commission's Strategic Plan**

In order to improve the efficiency and effectiveness of enforcement efforts, the Commission's 2013 – 2015 Strategic Plan includes the action item, *"Enhance and adopt guidance for alternative responses to non-compliance (e.g., technical assistance, warning/advisory letters, notices of correction, etc.) and amend regulations accordingly."* At the Commission's March 26, 2015 meeting, staff will seek direction for next steps about how to consider alternative responses to alleged violations of RCW 42.17A, when a traditional enforcement hearing, the finding of a violation, and the assessment of monetary penalties appears as an unnecessary or inefficient use of the Commission and staff's resources. Depending on how the Commission wishes to proceed, staff will provide information about possible rule making.

#### **Alternative Responses in Current Use / Possible Additional Tools**

- **Technical Assistance**

Staff provides technical assistance to filers when a concern is raised about the filer's reports. Certain formal complaints, including those alleging untimely campaign registration and reporting, may also be resolved by providing technical assistance to the Respondent in order to effect disclosure. The Commission may direct staff to provide such assistance when appropriate, in lieu of taking formal investigative or enforcement action, and may consider formalizing this approach as a rule and expanding its coverage to specific types of cases.

- **Warning Letters**

Staff issues warning letters to sponsors of political ads to dispose of complaints about the sponsor's failure to include a complete statement of sponsor identification in the advertising, or party preference in a partisan race. Staff uses this tool only when the sponsor has no prior infractions on record related to sponsor ID/party preference in political advertising. The warning letter explains the requirements of the law and rule, and holds out the possibility of enforcement action for future violations. A copy of a representative sponsor ID warning letter is attached to this memo.

- **Notices of Correction**

While a warning letter recites available facts and information about an incident and indicates that it may have been a violation, a notice of correction would confirm staff's determination that an apparent violation has occurred and state the necessary corrective action(s) the Respondent has taken or agrees to take. If the corrective action is completed, no further response to the complaint is necessary and it could be closed. If the corrective action is not completed, additional enforcement action may be necessary. This option would not require the voluntary agreement of the Respondent and could be used in those circumstances where timely correction of the non-compliance better serves the public interest than an after-the-fact sanction. Importantly, though, because by law only the Commission can find a Respondent in violation, if a Respondent fails to take the corrective action instructed by staff, any additional enforcement would require staff to bring the matter to the Commission through a brief or full hearing.

- **Statements of Understanding**

In the group enforcement process, some Respondents with missing or untimely filings are found in violation by the presiding officer at brief adjudicative hearings authorized under WAC 390-37-140, while others agree to a stipulated violation and penalty in order to avoid a hearing. These stipulated violations are adjudicated without the need for an investigative report, through a consolidated hearing notice/notice of administrative charges, and a statement of understanding signed by the Respondent.

The Commission could consider whether this approach may be adapted to address violations outside the group enforcement process, when the violation is clear to the parties, and the Respondent wishes to avoid the time and expense of a formal hearing. A copy of a representative Statement of Understanding from the group enforcement process is attached to this memo.

- **Deferral**

Deferring action on a complaint may provide an efficient alternative for certain types of minor non-compliance. If the conditions of the deferral are met, the complaint would be dismissed with no further investigation or action. If the conditions of the deferral are not met, the complaint would then be processed in the normal course. Deferrals could be available at a variety of stages of the complaint process: before a formal investigation is undertaken (when minor/technical violations are readily apparent), after an investigation is completed but before charges are issued, or after charges are issued. The conditions of the deferral would need to be clearly defined and voluntarily agreed to by the Respondent, along with the consequences for failure to meet the conditions of the deferral.

- **Brief Enforcement Hearings**

Under WAC 390-37-140, staff may schedule alleged violations for a brief adjudicative hearing when the facts are undisputed, the violations appear to be relatively minor in nature, and a penalty no greater than \$500 will be assessed for the violations. As described above, certain brief adjudicative hearings are conducted without the need for a formal investigation or investigative report, and the Commission may direct staff to use of this model of enforcement for other straightforward instances of non-compliance. In addition, certain cases that are good candidates for brief enforcement are excluded from being heard in that venue because the facts are in dispute or the amount of a penalty may be higher. The Commission may wish to consider amending its rules to eliminate the requirement that only undisputed facts may be heard in the brief enforcement setting, or to increase the penalty amount for matters that could be adjudicated at this level.

- **Stipulations**

Stipulations to facts, violations, and penalty, or to some combination of the three, are a common feature of enforcement proceedings before the full Commission, and serve to provide a streamlined hearing experience. Similar to statements of understanding, the Commission may direct staff to expand the use of stipulations to contexts other than full enforcement hearings. WAC 390-37-090 of the Commission's rules, governing stipulations, is attached.

- **Fair Campaign Practices Code**

Per RCW 42.17A.110(7), the Commission is empowered to adopt a Fair Campaign Practices Code. The Commission's rules at WAC 390-32-010 through WAC 390-32-030 establish the provisions of the Code, and provide for the processing of complaints under the Code. Fair Campaign Practices Code complaints are not adjudicated through enforcement proceedings; rather, complaints and responses are made public without commentary, within six days of the date of receipt of the original complaint. As currently adopted, the Code does not regulate the disclosure provisions of RCW 42.17A, or other common topics of complaints, and "violations" of the code do not constitute violations of RCW 42.17A. The Commission may wish consider amending its rules to allow complainants, at their option, to have alleged violations of RCW 42.17A processed as Fair Campaign Practices Code complaints, or to allow PDC staff the discretion to process traditional complaints under the Code, when the circumstances warrant. For example, complaints alleging violations of RCW 42.17A.335, the false political advertising law, could be seen as good candidates for the sort of public reckoning that the Code provides.

### **Candidates for Alternative Responses to Non-Compliance**

Below, I will discuss categories of alleged violations that staff believes would be good candidates for an alternative response, whether through the tools described above, or other mechanisms the Commission may care to propose.

- **Minor Use of Facilities (47 complaints in 2013 - 2014 election cycle)**

It may be appropriate to fashion an alternative response to minor, inadvertent, or one-time uses of public facilities to assist a candidate's campaign, or to promote or oppose a ballot proposition. For example, a minor use of public agency email systems is a fairly common type of alleged violation.

- **Late Reporting or Missing Reports (115 complaints in 2013 - 2014 election cycle)**

A majority of PDC complaints concern missing or late reports. When reports can be brought into compliance before the election, and the late-reported activity is relatively modest, alternatives to enforcement may be appropriate.

- **Exceeding Contribution Limits (15 complaints in 2013 - 2014 election cycle)**

Minor or inadvertent contribution limit violations, including violations of the voluntary Mini Reporting limits, may be good candidates for a notice of correction or other alternative response, particularly when the Respondent takes steps available to them to return to compliance.

- **Sponsor/Party Preference Disclosure (36 complaints in 2013 - 2014 election cycle)**

Continuation of the warning letter system for political advertising seems appropriate, particularly considering the common error of omitting complete sponsor ID, including mailing address, from Internet-based advertising and other advertising.

- **False Political Advertising (26 complaints in 2013 - 2014 election cycle)**

As discussed above, the high burden of proof required for a technical violation of RCW 42.17A.335 may recommend such alleged violations for some manner of alternative response, including but not limited to processing the allegations under the Fair Campaign Practices Code.

- **Personal Financial Affairs Disclosure (13 complaints in 2013 - 2014 election cycle)**

Most complaints that concern F-1 reports are minor or technical in nature, and may a good candidate for technical assistance or another alternative response.

### **Discussion Points for Implementing or Expanding Alternative Responses**

- Within the appropriate categories of complaints, are there circumstances under which an alternative response *must* include a violation and possible penalty? For example, should a Respondent receive a warning letter for a first-time violation of sponsor identification requirements when important information was omitted from the sponsor identification, when the ad campaign requires a major outlay of funds, reaches a significant number of people, perhaps in a statewide campaign, and the sponsor has no plans to sponsor additional advertising?
- WAC 390-37-182 of the Commission's rules (Penalty Factors) assists the Commission in determining an appropriate penalty in the adjudication of complaints, and could also serve as a framework for staff in determining when an



alleged violation may be disposed with some manner of alternative response. The listed factors include the impact of a violation on the public, including whether the noncompliance deprived the public of timely or accurate information during a time-sensitive period; the sophistication of respondent, or respondent's organization, or size of campaign; the amount of financial activity during statement period or election cycle; whether the noncompliance resulted from a knowing or intentional effort to conceal, deceive or mislead, or violate the law, and other factors. Are there factors not listed in the rule, or criteria that the Commission believes must be met, before an alternative response to non-compliance is appropriate?

- Should a Respondent be eligible to receive more than one alternative response before more formal enforcement occurs? In the context of adjudicated violations, WAC 390-37-182 suggests that Respondents may only avoid a penalty for a first-time violation.
- Should each type of infraction have a separate track for a given Respondent? For example, should a sponsor identification infraction count against a Respondent who later has a late filing issue, or commits a use of public facilities prohibited under RCW 42.17A.555?

### **Next Steps**

The Commission may wish to direct staff to pursue alternative responses to non-compliance available within existing rules. The Commission may also direct staff to formulate new rules concerning alternative responses to non-compliance, including the standards for an alternative response. The Commission may need to amend its rules under Chapter 390-37 WAC (Enforcement procedures), and Chapter 390-32 WAC (Fair Campaign Practices Code), to provide flexibility to pursue alternative responses to non-compliance in response to a formal complaint. Copies of the relevant rules are attached to this memo.

### **Attachments:**

Example of Political Advertising Warning Letter

Example of Statement of Understanding (C-1 Group Enforcement)

WAC 390-32-010 Fair Campaign Practices Code for candidates and political committees.

WAC 390-32-030 Complaints—Fair Campaign Practices Code.

WAC 390-37-001 Enforcement cases—Jurisdiction.

WAC 390-37-010 Enforcement procedures—General.

WAC 390-37-020 Enforcement procedures—Initiation of complaint.

WAC 390-37-030 Enforcement procedures—Citizen complaints filed with the commission.

WAC 390-37-040 Enforcement procedures—Procedures for filing complaints with the commission.

WAC 390-37-041 Enforcement procedures—Allegations submitted to the attorney general's office and/or prosecuting attorneys.

WAC 390-37-050 Enforcement procedures—Respondent's notice of complaint.

WAC 390-37-060 Enforcement procedures—Investigation of complaints—Initiation of hearing (adjudicative proceeding).

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

WAC 390-37-090 Informal settlement—Cases resolvable by stipulation prior to an enforcement hearing (adjudicative proceeding), or by other alternative dispute mechanisms.

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

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

WAC 390-37-182 Penalty factors.



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February 4, 2014

DONALD MALO  
INDEPENDENT WHITE CENTER  
9827 17<sup>TH</sup> AVE SW  
SEATTLE WA 98106

Subject: Sponsor Identification Warning Letter

Dear Mr. Malo:

On October 29, 2012, the Public Disclosure Commission (PDC) received a complaint from Martha Koester, alleging that Lee Rabie violated RCW 42.17A.320 by sponsoring a political advertising mailing without including proper sponsor identification. Ms. Koester's complaint included a copy of a flyer that appeared to be sponsored by Independent White Center, a political committee registered with the PDC, that had been distributed by Mr. Rabie to voters in the Burien area along with a letter from him. A copy of the flyer is enclosed. This sponsor identification warning letter is being sent to Independent White Center as the sponsor of the flyer that was the subject of the complaint.

- **RCW 42.17A.320(1)** requires all written political advertising, whether relating to candidates or ballot propositions, to include the sponsor's name and address.
- **RCW 42.17A.320(3)(a)** requires the sponsor identification to appear in at least ten-point type, or in type at least ten percent of the largest size type used in a written advertisement or communication directed at more than one voter, such as a billboard or poster, whichever is larger.
- **RCW 42.17A.320(3)(b)** requires that the sponsor identification not be subject to the half-tone or screening process, and RCW 42.17.320(3)(c) requires that the sponsor identification be set apart from any other printed matter.
- **WAC 390-18-010** requires that printed advertising clearly state, in an area set apart from any other printed matter, that it has been paid for by the sponsor (Example: (1) Paid for by the XYZ committee, mailing address, city, state, zip code; (2) Vote for John Doe, paid for by John Doe, mailing address, city, state, zip code).

The flyer, sponsored by Independent White Center, urged readers to vote “No” on a Burien annexation ballot measure on the November 6, 2012 general election ballot. The flyer stated “Paid for by IndependentWhiteCenter.com” and provided a telephone number to call for a free yard sign. Elsewhere on the flyer, it stated

**“IndependentWhiteCenter.com** *A PAC registered with the State of Washington”*

However, Independent White Center failed to include its address in the sponsor identification, as required by RCW 42.17A.320(1).

This letter is to inform you that as a committee supporting or opposing a ballot proposition, you were required to provide proper sponsor identification on your political advertising as noted above. Failure to include proper sponsor identification on future political advertising could result in enforcement action.

I have enclosed a copy of the PDC’s Political Advertising brochure. If you have questions, please contact PDC staff member Tony Perkins at (360) 586-1042, toll-free at 1-877-601-2828, or by email at [tony.perkins@pdc.wa.gov](mailto:tony.perkins@pdc.wa.gov).

Sincerely,

Philip E. Stutzman  
Director of Compliance

Enclosures – (1) Flyer; (2) Political Advertising Brochure

FOR PDC USE ONLY	
PDC Case No.	
Check No.	
Penalty Amount Paid	

**PDC Statement of Understanding  
2014 Candidate C-1 Report**

I hereby acknowledge that I, \_\_\_\_\_, did not  
(Printed Name of Respondent)

timely file the Candidate Registration (C-1 Report) that was due within two weeks of my becoming a candidate, or no later than May 31, 2014, violation of RCW 42.17A.205.

I want to avoid the time and expense resulting from a brief enforcement hearing before the Commission. Therefore, I am completing the Statement of Understanding, and enclosing a check or money order in the amount of \$100, in lieu of a hearing being held.

I understand that this will resolve all issues regarding my failure to timely file the C-1 report, provided that a check or money order for \$100, and this signed Statement of Understanding are all received by **Wednesday, August 6, 2014.**

I further understand that the Commission will not hold a hearing regarding my obligation to timely file the C-1 report that was due as described above.

\_\_\_\_\_  
Signature of Respondent/Candidate

\_\_\_\_\_  
Date Signed

Be sure to include your C-1 report, and make your check or money order payable to "Washington State Treasurer." Mail or deliver this Statement of Understanding, your completed C-1 report, and your payment to:

**Public Disclosure Commission  
711 Capitol Way, Room 206  
P.O. Box 40908  
Olympia, WA, 98504-0908**

**WAC 390-32-010**

Agency filings affecting this section

**Fair Campaign Practices Code for candidates and political committees.**

Pursuant to the provisions of RCW 42.17A.110 (1) and (6) the public disclosure commission adopts this Fair Campaign Practices Code:

(1) I shall conduct my campaign, and to the extent reasonably possible shall insist that my supporters conduct themselves, in a manner consistent with the best American tradition, discussing the issues and presenting my record and policies with sincerity and candor.

(2) I shall uphold the right of every qualified voter to free and equal participation in the election process.

(3) I shall not participate in, and I shall condemn, personal vilification, defamation, and other attacks on any opposing candidate or party which I do not believe to be truthful, provable, and relevant to my campaign.

(4) I shall not use or authorize, and I shall condemn material relating to my campaign which falsifies, misrepresents, or distorts the facts, including but not limited to malicious or unfounded accusations creating or exploiting doubts as to the morality, patriotism or motivations of any party or candidate.

(5) I shall not appeal to, and I shall condemn appeals to, prejudices based on race, creed, sex or national origin.

(6) I shall not practice, and I shall condemn practices, which tend to corrupt or undermine the system of free election or which hamper or prevent the free expression of the will of the voters.

(7) I shall promptly and publicly repudiate the support of any individual or group which resorts, on behalf of my candidacy or in opposition to that of my opponent(s) to methods in violation of the letter or spirit of this code.

(8) I shall refrain from any misuse of the Public Disclosure Law, chapter 42.17A RCW to gain political advantage for myself or any other candidate.

[Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-32-010, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370(1). WSR 85-22-029 (Order 85-04), § 390-32-010, filed 10/31/85; Order 93, § 390-32-010, filed 8/26/77; Order 64, § 390-32-010, filed 11/25/75; Order 62, § 390-32-010, filed 8/26/75; Order 50, § 390-32-010, filed 3/3/75.]

**WAC 390-32-030**

No agency filings affecting this section since 2003

**Complaints—Fair Campaign Practices Code.**

(1) Written and signed complaints alleging a violation of one or more specific provisions of the Fair Campaign Practices Code for candidates and political committees (WAC 390-32-010) may be submitted to the public disclosure commission by any person.

(2) Upon receipt of a complaint, the executive director shall forward a copy of the complaint to the complainee within twenty-four hours, accompanied by a request for a response to the complaint returned within five days from the date of mailing.

(3) Upon receipt of the complainee's response, the executive director shall forward a copy to the complainant. A copy of the complaint and the response shall be sent to news media. The complaint and the response shall be available at the commission office for public inspection and copying. If the complainee does not respond within five days, the complaint shall be made public without a response.

(4) The commission will make no attempt to secure a reply to and will make no public release of complaints received within eight days of an election.

(5) The commission will not issue comments or opinions about complaints or responses.

(6) In the absence of any contrary intention as expressed by the complainant, the filing of a complaint with the commission constitutes implied consent to have the complainant's identity disclosed.

[Statutory Authority: RCW 42.17.370(1). WSR 85-22-029 (Order 85-04), § 390-32-030, filed 10/31/85; Order 93, § 390-32-030, filed 8/26/77; Order 91, § 390-32-030, filed 7/22/77.]

**Enforcement cases—Jurisdiction.**

The commission enforces chapter 42.17A RCW concerning campaign financing, lobbyist reporting, reporting of public officials' financial affairs, reporting by public treasurers, political advertising, campaign contribution limitations and the other provisions in chapter 42.17A RCW. The commission does not enforce the Public Records Act under chapter 42.56 RCW. RCW 42.56.550 provides for direct review by the superior courts for persons seeking to enforce chapter 42.56 RCW.

[Statutory Authority: RCW 42.56.100, 42.56.040, and 42.17A.110. WSR 12-18-015, § 390-37-001, filed 8/24/12, effective 9/24/12. Statutory Authority: RCW 42.17.370. WSR 03-22-065, § 390-37-001, filed 11/4/03, effective 12/5/03.]



**Enforcement procedures—General.**

This chapter provides the procedures for adjudicative proceedings (hearings) in compliance cases under the commission's jurisdiction. The procedures are also governed by RCW 42.17A.755, and the adjudicative proceedings provisions of chapter 34.05 RCW. Unless they differ or are otherwise specifically addressed in this chapter, the procedure, are supplemented by the model rules of procedure in chapter 10-08 WAC. In lieu of holding an adjudicative proceeding or issuing an order as a result of such a proceeding, the commission may refer the matter to the attorney general or other law enforcement agency pursuant to RCW 42.17A.105(5) and 42.17A.755.

In addition, the procedures for requesting a hearing on a petition to modify or suspend reporting requirements are provided in RCW 42.17A.120 and chapters 390-24 and 390-28 WAC.

The policy of the commission shall be to facilitate the resolution of compliance matters in a fair and expeditious manner. The commission encourages the parties to consider alternative resolution or partial resolution procedures such as stipulations under WAC 390-37-090, when appropriate. Informal settlements are encouraged by RCW 34.05.060.

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

**Enforcement procedures—Initiation of complaint.**

(1) A complaint alleging a violation of chapter 42.17A RCW may be brought to the attention of the commission staff by:

(a) A member of the public;

(b) The commission staff;

(c) A commission member, who shall then be disqualified from participating in the decision of an enforcement hearing that may arise from the complaint;

(d) Referral from the office of the attorney general or any other law enforcement agency;

(e) A state agency, local agency or member of a state or local agency.

(2) The person or entity against whom a complaint is filed shall be known as the respondent.

[Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-37-020, filed 1/4/12, effective 2/4/12.

Statutory Authority: RCW 42.17.370. WSR 93-24-003, § 390-37-020, filed 11/18/93, effective 12/19/93.

Statutory Authority: RCW 42.17.370(1). WSR 84-12-017 (Order 84-03), § 390-37-020, filed 5/25/84; Order 79, § 390-37-020, filed 6/25/76.]

**Enforcement procedures—Citizen complaints filed with the commission.**

(1) When a citizen complaint has been filed with the agency pursuant to WAC 390-37-040, neither the complainant nor any other person shall have special standing to participate or intervene in the investigation or consideration of the complaint by the commission. However, the staff shall give notice to the complainant of any open commission hearings on the matter and the complainant may be called as a witness in any enforcement hearing or investigative proceeding.

(2) The complainant or any other person may submit documentary evidence and/or written factual or legal statements to the staff at any time up to and including the fifth calendar day before the date of any enforcement hearing or proceeding.

(3) A person not satisfied with the dismissal of a complaint by the commission or its executive director may pursue an appropriate remedy under RCW 42.17A.765(4).

[Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-37-030, filed 1/4/12, effective 2/4/12.  
Statutory Authority: RCW 42.17.370(1). WSR 04-12-058, § 390-37-030, filed 5/28/04, effective 6/28/04.  
Statutory Authority: RCW 42.17.370. WSR 03-22-065, § 390-37-030, filed 11/4/03, effective 12/5/03; WSR 02-23-001, § 390-37-030, filed 11/6/02, effective 12/7/02. Statutory Authority: RCW 42.17.370(1). WSR 86-04-071 (Order 86-01), § 390-37-030, filed 2/5/86; WSR 84-12-017 (Order 84-03), § 390-37-030, filed 5/25/84; Order 79, § 390-37-030, filed 6/25/76.]

**Enforcement procedures—Procedures for filing complaints with the commission.**

(1) A complaint filed with the commission, relating to an elected official or a candidate for elective office, shall be in writing and signed by the complainant under oath.

(2) A complaint filed with the commission, other than a complaint specified in subsection (1) of this section, shall be made in writing.

(3) A complaint filed under the provisions of either subsection (1) or (2) of this section shall include:

(a) A statement of the nature of the alleged violation or violations, date, time and place of each occurrence and name of person or persons responsible;

(b) All available documentation and other evidence which the complainant is able to supply to demonstrate a reason for believing that a violation of the sections of chapter 42.17A RCW that are enforced by the commission has occurred; and

(c) The name, address, telephone number, and other contact information for the complainant.

[Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-37-040, filed 1/4/12, effective 2/4/12.

Statutory Authority: RCW 42.17.370. WSR 03-22-065, § 390-37-040, filed 11/4/03, effective 12/5/03.

Statutory Authority: RCW 42.17.370(1). WSR 84-12-017 (Order 84-03), § 390-37-040, filed 5/25/84; Order 79, § 390-37-040, filed 6/25/76.]

## **Enforcement procedures—Allegations submitted to the attorney general's office and/or prosecuting attorneys.**

When a person has notified the attorney general or prosecuting attorney under RCW 42.17A.765(4) that there is reason to believe a violation of the sections of chapter 42.17A RCW enforced by the commission has occurred, and the attorney general or prosecutor forwards the complaint to the commission, commission staff may:

- (1) Initiate an investigation;
  - (2) Submit a report to the commission that may include a recommendation;
  - (3) Schedule the matter for an adjudicative proceeding before the commission following investigation;
- and/or
- (4) Take any other steps consistent with the agency's authority and resources.

[Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-37-041, filed 1/4/12, effective 2/4/12.  
Statutory Authority: RCW 42.17.370(1). WSR 04-12-059, § 390-37-041, filed 5/28/04, effective 6/28/04.  
Statutory Authority: RCW 42.17.370. WSR 03-22-065, § 390-37-041, filed 11/4/03, effective 12/5/03.]

**Enforcement procedures—Respondent's notice of complaint.**

Within ten business days of receipt by the commission of a complaint which on its face appears to have merit, the commission shall notify the respondent that a complaint has been filed. The notice shall set forth the nature of the complaint and its origin (citizen complaint, commission or other) and the statutory provision alleged to have been violated.

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

## **Enforcement procedures—Investigation of complaints—Initiation of hearing (adjudicative proceeding).**

(1) Upon receipt of a complaint the following will occur:

(a) The executive director will conduct an initial review of the complaint to determine if it is obviously unfounded or frivolous or appears on its face to have merit. An initial review is a preliminary investigation to determine if there is sufficient ground indicating that a material violation of chapter 42.17A RCW may have occurred and/or the respondent may not be in substantial compliance with the relevant statutes and rules.

(b) Whenever an initial review of a complaint indicates that a material violation of chapter 42.17A RCW may have occurred and/or the respondent may not be in substantial compliance with the relevant statutes and rules, the executive director may direct a formal investigation be conducted.

(c) If the executive director determines a formal investigation will require the expenditure of substantial resources, the executive director may request review and concurrence by the commission before proceeding.

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

(3) The respondent shall be notified of the date of the adjudicative proceeding no later than ten calendar days before that date. The notice shall contain the information required by RCW 34.05.434. The complainant shall also be provided a copy of this notice.

(4) It is the policy of the commission during the course of any investigation that all records generated or collected as a result of that investigation are exempt from public inspection and copying under RCW 42.56.240(1).

(a) The records are exempt until:

(i) The enforcement matter is scheduled for an adjudicative proceeding;

(ii) After receiving a report on an enforcement matter, the commission accepts the investigation as complete and moves the matter forward to an adjudicative proceeding, or dismisses the complaint, or refers the matter to law enforcement authorities under RCW 42.17A.105 or 42.17A.755(3);

(iii) The commission or chair concur in a dismissal by the executive director; or

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

(b) Without waiving any exemptions from public disclosure that are otherwise available for pending investigations, the commission may make public:

(i) A copy of a complaint filed with or submitted to the commission, including any attachments; and

(ii) Materials concerning an enforcement matter that are placed on the commission's web site with a commission meeting agenda.

(c) If a request is made for any such record that implicates the privacy of an individual as defined in RCW 42.56.050, written notice of the records request may be provided to the individual in order that such individual may request a protective order from a court under RCW 42.56.540.

(d) Certain documents provided to the commission shall be returned to candidates, campaigns, or political committees as required by RCW 42.17A.105 within seven calendar days of the commission's final action upon completion of an audit or field investigation.

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

**Enforcement procedures—Complaints dismissed by executive director.**

The executive director, with the concurrence of the chair or the chair's designee, at any time prior to consideration by the commission, may dismiss a complaint which on its face, or as shown by investigation, does not show reason to believe that a material violation of the sections of chapter 42.17A RCW that are enforced by the commission has occurred and/or shows that the respondent is in substantial compliance with the relevant statutes or rules.

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



## **Informal settlement—Cases resolvable by stipulation prior to an enforcement hearing (adjudicative proceeding), or by other alternative dispute mechanisms.**

(1) RCW 34.05.060 authorizes agencies to establish by rule specific procedures for attempting and executing informal settlement of matters. The following procedures are available for informal dispute resolution prior to an adjudicative proceeding that may make more elaborate proceedings under the Administrative Procedure Act unnecessary.

(a) Any enforcement matter before the commission which has not yet been heard in an adjudicative proceeding may be resolved by settlement. The respondent shall communicate his or her request to the executive director or designee (commission staff), setting forth all pertinent facts and the desired remedy. Settlement negotiations shall be informal and without prejudice to rights of a participant in the negotiations.

(b) When the executive director and respondent agree to terms of any stipulation of facts, violations, and/or penalty, commission staff shall prepare the stipulation for presentation to the commission.

(c) Any proposed stipulation shall be in writing and signed by each party to the stipulation or his or her representative. The executive director shall sign for commission staff. Any stipulation to facts and violations shall be provided prior to or at the hearing. Stipulations to penalty shall be provided by 4:00 p.m. the business day preceding the hearing. The commission has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the commission accepts the stipulation or modifies the stipulation with the agreement of the opposing party, the commission shall enter an order in conformity with the terms of the stipulation. If the commission rejects the stipulation or the opposing party does not agree to the commission's proposed modifications to the stipulation, and if no revised stipulation or staff report is presented to the commission, then an adjudicative proceeding shall be scheduled and held.

(2) Parties are encouraged to be creative in resolving cases without further litigation where appropriate.

(3) Following a stipulation of facts or law, if the commission determines certain sanctions or other steps are required by the respondent as a result of the alternative dispute resolution including stipulations and that it intends to enter an order, and the respondent does not timely raise an objection at the hearing, it shall be presumed that the respondent has waived objections and appeals, and agrees to the entry of the order.

[Statutory Authority: RCW 42.17.370. WSR 06-14-057, § 390-37-090, filed 6/29/06, effective 7/30/06; WSR 05-11-001, § 390-37-090, filed 5/4/05, effective 6/4/05; WSR 03-22-065, § 390-37-090, filed 11/4/03, effective 12/5/03; WSR 91-16-072, § 390-37-090, filed 8/2/91, effective 9/2/91. Statutory Authority: RCW 42.17.370(1). WSR 86-04-071 (Order 86-01), § 390-37-090, filed 2/5/86; WSR 84-12-017 (Order 84-03), § 390-37-090, filed 5/25/84; Order 81, § 390-37-090, filed 7/22/76.]

**Commission options following receipt of a staff report on alleged violations.**

Upon receipt of a staff report concerning alleged violations of those sections of chapter [42.17A](#) RCW that the commission enforces, the commission may:

- (1) Schedule the matter for a hearing (adjudicative proceeding); or
- (2) Issue an order; or
- (3) Refer the matter or apparent violations to the attorney general or other enforcement agency pursuant to RCW [42.17A.105\(5\)](#) and [42.17A.750](#).

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

**Brief enforcement hearings (adjudicative proceedings)—Authority.**

(1) The commission may provide a brief adjudicative proceeding for violations of the sections of chapter 42.17A RCW that it enforces in which the facts are undisputed, the violations appear to be relatively minor in nature, and a penalty no greater than \$500 will be assessed for the violations. Typical matters to be heard in a brief adjudicative proceeding include, but are not limited to, the following:

- (a) Failure to file or late filing of required reports,
  - (b) Failure to report or accurately report campaign contributions or expenditures or funds spent in lobbying,
  - (c) Use of public office facilities in election campaigns when the value of public funds expended was minimal,
  - (d) Infractions of political advertising law regarding sponsor identification or political party identification.
- (2) The commission may utilize a penalty schedule for brief adjudicative proceedings.
- (3) Brief adjudicative proceedings are set forth in RCW 34.05.482 through 34.05.494.

[Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-37-140, filed 1/4/12, effective 2/4/12.  
Statutory Authority: RCW 42.17.370. WSR 03-22-065, § 390-37-140, filed 11/4/03, effective 12/5/03; WSR 93-15-004, § 390-37-140, filed 7/7/93, effective 8/7/93; WSR 91-16-072, § 390-37-140, filed 8/2/91, effective 9/2/91.]

**WAC 390-37-182**

Agency filings affecting this section

**Penalty factors.**

(1) In assessing a penalty, the commission considers the purposes of chapter 42.17A RCW, including the public's right to know of the financing of political campaigns, lobbying and the financial affairs of elected officials and candidates as declared in the policy of RCW 42.17A.001; and, promoting compliance with the law. The commission also considers and applies RCW 42.17A.755 and may consider any of the additional factors described in (3).

(2) Under RCW 42.17A.755, the commission:

(a) May waive a penalty for a first-time violation;

(b) Shall assess a penalty for a second violation of the same rule by the same person or individual, regardless if the person or individual committed the violation for a different political committee;

(c) Shall assess successively increased penalties for succeeding violations of the same rule.

(3) In addition to the requirements of RCW 42.17A.755, the commission may consider the nature of the violation and any relevant circumstances, including the following factors:

(a) The respondent's compliance history, including whether the noncompliance was isolated or limited in nature, indicative of systematic or on-going problems, or part of a pattern of violations by the respondent;

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

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

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

(e) Whether the noncompliance resulted from a knowing or intentional effort to conceal, deceive or mislead, or violate the law;

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

(g) Whether the respondent or anyone else benefitted economically from the noncompliance;

(h) Personal emergency or illness of the respondent or member of his or her immediate family;

(i) Other emergencies such as fire, flood, or utility failure preventing filing;

(j) Commission staff or equipment error, including technical problems at the agency preventing or delaying electronic filing;

(k) Corrective action or other remedial measures initiated by respondent prior to enforcement action, or promptly taken when noncompliance brought to respondent's attention (e.g., filing missing reports, amending incomplete or inaccurate reports, returning prohibited or overlimit contributions);

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

(m) Good faith efforts to comply, including consultation with commission staff prior to initiation of enforcement action and cooperation with commission staff during enforcement action;

(n) Penalties imposed in factually similar cases; and,

(o) Other factors relevant to a particular case.

(4) The commission, and the presiding officer in brief adjudicative proceedings, may consider the factors in (1) - (3) in determining whether to suspend a portion or all of a penalty upon identified conditions, and whether to accept, reject, or modify a stipulated penalty amount recommended by the parties.

(5) The presiding officer in brief adjudicative proceedings may consider whether any of the factors in (1) - (3) are factors that warrant directing a case to the full commission.

[Statutory Authority: RCW 42.17A.110, 42.17A.755. WSR 13-05-014, § 390-37-182, filed 2/7/13, effective 3/10/13.]