

Response to Staff's Memo

Before your vote on Thursday to deny my APA Rulemaking Petition, I wanted to respond to staff's memo dated May 16, 2024, which recommends that the Commissioners deny the petition without even considering it. The memo suggests that such policy matters should only be considered at the strategic planning meetings. I would encourage you to actually consider the merits of the idea. If you disagree with the idea, deny it on the merits, setting forth specific reasons why you disagree with the idea.

You have all seen by now what happens at a strategic planning meeting. There is nothing special about a strategic planning meeting compared to a regular meeting. The agency's leadership staff use the existence of strategic planning meetings as a convenient defense to avoid substantive discussion and consideration of ideas that they disagree with.

Over the last two years of meetings, I have seen the influence that agency leadership staff exercise over the Commissioners. Agency leadership staff selectively determine a) which data/information is made available to the Commissioners and b) which options they deem as "viable" for you to take. Through the expert use of this influence, the PDC has become an agency that is effectively run by the staff with little meaningful oversight from the 5-member Commission.

The staff presentations at the "monthly enforcement report" is a perfect example of this. During these presentations, no effort is made at providing the Commissioners with a meaningful summary of the cases that are resolved; most of the report consists of rattling off statistics of how many cases are opened/resolved. I can't recall a single instance during this segment of the meetings where staff sought guidance from the Commissioners as it relates to how warning letters are being used.

In fact, at the recent March strategic planning meeting, Commissioner Hayward – who has been with the agency for 3 years now – expressed significant confusion about how the agency was using warning letters and what effect a warning letter dismissal has. Since October 2023, other Commissioners have expressed similar confusion about the use of warning letters.

Consider this question: if staff are effectively liaising with the Commissioners on enforcement matters (as is asserted in the staff's memo) how is it that the Commissioners would be so confused about one of the agency's most frequently utilized resolution method?

Here's the reason: until recently, there has been virtually no focus or oversight from the Commissioners as to how agency staff are utilizing warning letter dismissals. Instead, agency staff's usage of warning letters is artfully glossed over as part of a monthly recitation of enforcement statistics.

My proposed change addresses this problem, and it does so without requiring any additional financial resources or statutory authorities. My proposal is this: if a staff investigation in an enforcement case shows that a violation occurred, but the staff want to nevertheless dismiss the complaint outright, they must first get the Chair's approval before doing so.

This change would provide a small but meaningful degree of oversight into how agency staff use warning letters.

If agency staff believe that they are using warning letters appropriately, they should have no reason to oppose this proposal.

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Warning Letter Dismissals (4/23/24 – 5/21/24)

As part of my continuing effort to shine a brighter light on how agency staff use warning letters, I am summarizing warning letters issued between now and last month's meeting.

During this time period, agency staff used warning letters dismissals in 15 cases where staff's investigation determined that there was a violation of RCW 42.17A.

Below is a summary of each case.

PDC Case 149069 Lewis County Republican Central Committee

In this case, the staff investigation found that the political committee Lewis County Republican Central Committee failed to timely disclose a \$2000 in-kind contribution from a business. The contribution was disclosed only in response to the complaint and only after the 2023 general election had concluded. The disclosure was 116 days late.

This committee had previously been issued a warning letter on January 23, 2024 as part of a separate case (Case 144126).

Despite the clear evidence of a violation that materially affected the public's right to know about the funding/finances of a committee (and even though the committee had previously received a warning letter), agency staff unilaterally dismissed the complaint with a "warning letter", thereby giving a green light to other committees to commit the same type of violation without fear of being penalized.

PDC Case 149546 49th Legislative District Democrats

In this case, the staff investigation found that committee 49th Legislative District Democrats had filed a false C3 report indicating that a \$2000 contribution had been deposited on 1/2/24 when it had actually been deposited 117 days earlier. The disclosure of the \$2000 contribution should have been disclosed before the 2023 general election. The disclosure was ultimately 87 days late.

Despite the clear evidence of a violation that materially affected the public's right to know about the funding/finances of a committee, agency staff unilaterally dismissed the complaint with a "warning letter", thereby giving a green light to other committees to commit the same type of violation without fear of being penalized.

Case 148641
Centralia School District 401 Officials

In this case, the staff investigation found that the Central School District had improperly used government resources to promote passage of a local school funding levy, in violation of RCW 42.17A.555. Specifically, employees for the district posted content that overtly advocated for a "yes" vote to district social media pages and had engaged in other marketing efforts to advocate for passage of the measure using supportive statements, persuasive statements, and promotional content.

The respondent in this case had previously received a reminder letter from the PDC back in 2020, which warned them not to engage in this type of conduct. See PDC Case 66039.

Despite the clear evidence of a violation that involved the misuse of government resources for electioneering (and even though the respondent had been previously warned), agency staff unilaterally dismissed the complaint with a "warning letter", thereby giving a green light to other school districts to commit the same type of violation without fear of being penalized.

PDC Case 149175
Woodland Citizens for Schools

In this case, the staff investigation found that the committee Woodland Citizens for Schools failed to respond to a legitimate request to inspect its books prior to the special election in which it was participating.

Incredibly, agency staff dismissed the complaint because "[the] committee was not aware of the statutory requirements to allow books of inspection to the public within 48 hours of the request being made by a member of the public."

In other words, at the PDC, ignorance of the law is an excuse.

Despite the clear evidence of a violation that materially affected the public's right to know about the funding/finances of a political committee, agency staff unilaterally dismissed the complaint with a "warning letter", thereby giving a green light to other committees to commit the same type of violation without fear of being penalized.

PDC Cases 10085, 150081, 150086, 150083, 150080, 150079
Various Law Enforcement Officials (grouped together because cases are factually similar)

In these cases, the staff investigation found that various law enforcement officials had improperly used government resources to appear in an endorsement video that promoted the candidacy of Dave Reichert for Governor, in violation of RCW 42.17A.555. They violated this prohibition by appearing in government uniforms in the campaign video but some of them also violated the prohibition by filming the campaign video in their government offices.

The PDC contacted the Reichert campaign and requested the removal of the endorsement video because it is promotional of the campaign and included elected Washington state sheriffs who were in county issued uniforms or using public facilities. The Reichert campaign did not respond to the PDC.

Despite the clear evidence of a violation that involved the misuse of government resources for electioneering, agency staff unilaterally dismissed these complaints with “warning letters”, thereby giving a green light to other law enforcement officials to commit the same type of violation without fear of being penalized.

Case 149461
Citizens for Bremerton Schools

In this case, the staff investigation found that committee Citizens for Bremerton Schools failed to timely disclose certain campaign expenditures and that the committee had been filing reports on the incorrect schedule.

Agency staff sought to excuse this conduct because of the inexperience of the committee’s officers.

Despite the clear evidence of a violation that materially affected the public’s right to know about the funding/finances of a committee, agency staff unilaterally dismissed the complaint with a “warning letter”, thereby giving a green light to other committees to commit the same type of violation without fear of being penalized.

PDC Case 149149
Al Merkel

In this case, the staff investigation found that the Spokane Valley City Council candidate Al Merkel failed to timely file a number of C4 reports. Specifically, the 21-day pre-general C4 report was filed 4 days late. The post-general C4 report was filed 111 days late. The end-of-election cycle C4 report was filed 93 days late.

Despite the clear evidence of a violation that materially affected the public’s right to know about the funding/finances of a candidate committee, agency staff unilaterally dismissed the complaint with a “warning letter”, thereby giving a green light to other candidates to commit the same type of violation without fear of being penalized.

PDC Case 149296
Chelsea Dimas

In this case, the staff investigation found that the 2024 state legislative candidate Chelsea Dimas had failed to timely file a number of C3 and C4 reports.

Despite the clear evidence of a violation that materially affected the public's right to know about the funding/finances of a candidate committee, agency staff unilaterally dismissed the complaint with a "warning letter", thereby giving a green light to other candidates to commit the same type of violation without fear of being penalized.

PDC Case 149327
CT Publishing

In this case, the staff investigation found that the commercial advertiser CT Publishing failed to allow a timely inspection of its commercial advertiser books of account.

Despite the clear evidence of a violation that materially affected the public's right to know about the funding and details of political advertising, agency staff unilaterally dismissed the complaint with a "warning letter", thereby giving a green light to other commercial advertisers to commit the same type of violation without fear of being penalized.

PDC Case 14918
Skagit Publishing

In this case, the staff investigation found that the commercial advertiser Skagit Publishing failed to allow a timely inspection of its commercial advertiser books of account.

Despite the clear evidence of a violation that materially affected the public's right to know about the funding and details of political advertising, agency staff unilaterally dismissed the complaint with a "warning letter", thereby giving a green light to other commercial advertisers to commit the same type of violation without fear of being penalized.