

Agency's Improper Handling of EY2019 Complaints

Summary

In December of 2023, I filed 98 complaints against candidates from the 2019 election cycle that had failed to timely file C3/C4 reports. This was part of a broader effort to encourage the agency to adopt a technology-assisted proactive approach to C3/C4 enforcement.

In the 9 months that have passed since then, the agency has taken zero action on these complaints. In a few weeks, the 5-year statute of limitations will prevent the agency from taking any action.

My concern is that the agency failed to follow applicable legal requirements which required the PDC to take certain actions upon receiving a complaint. For instance, upon receiving a complaint, the agency is required to provide notice of the complaint to the respondent. The agency failed to do this. Additionally, the agency was required to post these complaints to the agency's enforcement page. The agency also failed to do this.

I acknowledge that the agency has an obligation to triage complaints that it receives and to prioritize limited enforcement resources to deal with complaints from the current election cycle.

However, under applicable law, it was improper for the agency to simply ignore these complaints and wait for the statute of limitations to expire.

Background

RCW 42.17A.755(1) establishes an obligation for the agency to act on complaints filed by members of the public. RCW 42.17A.770 establishes a 5-year statute of limitations. Additionally, the agency is obligated to provide notice to respondents that a complaint has been filed against them. WAC 390-37-050(1) requires that: *"[w]ithin ten days of receipt by the PDC of a complaint which on its face appears to have merit, or initiation of a complaint by the PDC staff, the PDC staff must notify the respondent that a complaint has been filed, along with an explanation of possible next steps"*. Finally, WAC 390-37-005(3) requires that: *"[e]ach enforcement matter will be posted on the PDC's public case-tracking database, where its status will be updated from time to time as appropriate until the matter is closed, to apprise the parties and general public."*

The agency failed to comply with these requirements. First, the agency failed to take any of the actions mandated by RCW 42.17A.755(1)(a-c) after receiving the complaints I filed. Second, the agency failed to notify the respondents that a complaint had been filed against them as mandated by WAC 390-37-050(1). Finally, the agency failed to upload these complaints onto the PDC's public case-tracking database as required by WAC 390-37-005(3).

Public Comment
September 2024 PDC Regular Meeting
Conner Edwards

Effectively, agency staff disregarded applicable legal requirements and decided to ignore all meritorious complaints associated with the 2019 election cycle. To date, agency staff appear to have taken this same strategy with respect to the 37 complaints I filed relating to 2020 candidates and the 107 complaints I filed relating to 2021 candidates.

Agency staff would likely respond by pointing to the fact that agency enforcement resources are limited and that there is a need to triage complaints because of current high volumes.

I acknowledge that agency enforcement resources are limited, and I also acknowledge that there is currently a need to triage complaints. However, the agency is obligated under the FCPA and its own rules to perform certain minimal steps to try to address complaints that have been filed that address violations within the 5-year statute of limitations. Here the agency made no such effort.

Were these election year 2019 complaints I filed “major” complaints? No, but they identified many violations that ought to have led to some type of penalties/corrective action being taken by the agency.

As one example, consider David Carson, who narrowly won his contested 2019 campaign bid for Redmond City Council. To this day, his campaign never filed either the 21-day, 7-day, or post-general C4 reports. His campaign reported raising \$9,539.14, but this number is likely an undercount due to his unfiled reports. Agency staff took no action in response to the complaint I had filed against this campaign.

Or take for example Cheryl Selby, the Mayor of Olympia who narrowly won re-election in a highly contested race in 2019. She reported raising \$55,903.87 for her campaign. In that campaign, she filed her 7-day C4 (which was due before the election) more than a month after the election was already over. The C4 disclosed \$7,168.86 in spending and \$2,435 in total deposits. Agency staff took no action in response to the complaint I had filed against this campaign.

As another example, consider Stephanie Wright, who won her contested 2019 bid for Snohomish County Council. Her campaign completely stopped filing reports two months before the election, although prior to that she reported raising \$20,748. To this day she has still never filed her 21-day C4, 7-day C4, or post-general C4. Agency staff took no action in response to the complaint I had filed against this campaign.

Conclusion

I recognize the need for enforcement resources to be prioritized. However, it is not appropriate for the PDC to simply ignore valid complaints and wait for the statute of limitations to expire.

As described above, the agency ignored applicable law which require the agency to take certain actions after receiving complaints that identify violations. The agency should take corrective action to make sure this does not happen again.

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Warning Letter Analysis (8/19/24 to 9/24/24)

During this period, agency staff resolved 22 cases with warning letter dismissals. In an effort to reduce the length of this written comment, I am no longer going to summarize each and every warning letter dismissal. Instead, I am going to summarize the top 5 cases where I believe that staff improperly used warning letter dismissals instead of pursuing penalties.

PDC Case No. 156124 – North Thurston Citizens for Schools

Time to Resolution: 82 Days

In this case, the staff investigation found that the respondent political committee had failed to disclose an \$8000 debt associated with a fundraising event. This debt was required to be disclosed on form C4 pursuant to state law.

This committee had already previously received a warning letter in 2023 for a failure to timely and accurately file C3/C4 reports over several years.

Despite the clear evidence of a violation that materially affected the public's right to know about the 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 Case No. 157538 - UA Local 32 PIPE PAC

Time to Resolution: 79 Days

In this case, the staff investigation found that the respondent political committee had failed to timely file a C3 disclosing a \$50,000 contribution. The contribution was disclosed 51 days after the deadline.

Despite the clear evidence of a violation that materially affected the public's right to know about the 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 Case No. 156267 - Washington State Veterinary Medical Association PAC

Time to Resolution: 82 Days

In this case, the staff investigation found that the respondent political committee had failed to timely file approximately 12 reports (both C3s and C4s) between 1-122 days late.

Despite the clear evidence of a violation that materially affected the public's right to know about the 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 Case No. 155445 Renton Firefighters for Yes on Prop 1
Time to Resolution: 87 Days

In this case, the staff investigation found that the respondent political committee had failed to file any of the required C3 or C4 reports about their financial activity until approximately one year after the applicable election was already held.

The respondent blamed the failure to timely file the required reports on the fact that the treasurer was “unfamiliar” with the PDC’s online filing system. This committee would not have qualified for mini reporting because it received more than \$500 from a single contributor.

Despite the clear evidence of a violation that materially affected the public’s right to know about the 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 Case No. 155615 – Thurston County Democrats
Time to Resolution: 114 Days

In this case, the staff investigation found that the respondent political committee had failed to timely file their March 2024 C4 by the April deadline. The report at issue was only made available to the public 135 days after the deadline and only in response to the complaint being filed.

This committee had already previously received a warning letter earlier in 2024 for failure to timely and accurately file C3/C4 reports over a series of years.

The respondent committee blamed the failure to timely file on an error associated with their third-party campaign finance reporting filing vendor, and it looks like there was evidence to support this.

However, I would point out that for federal campaigns, the FEC will only excuse late filing that are based on a failure of FEC programs/technology. The FEC does not accept failure of third-party programs/technology as a viable defense.¹

I would also point out that if the agency had adopted the same type of technology-assisted proactive enforcement model that the FEC and neighboring states follow, the PDC would have noticed this respondent’s failure to timely file the March report immediately and been able to quickly work with the respondent to get the report filed and rectify the issue.

Despite the clear evidence of a violation that materially affected the public’s right to know about the 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.

¹ <https://www.fec.gov/legal-resources/enforcement/administrative-fines/>