Problems with BAP Process
Conner Edwards
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Problem #1: Respondents have little incentive to sign SOUs and often show up to hearings even though they do not have a legitimate defense to what they are being charged with.

As it stands today, respondents have little incentive to sign SOUs. SOUs are roughly equivalent to plea deals in the US criminal justice system. When a respondent signs an SOU, they admit to the charged violation and agree to pay a penalty. When a respondent signs an SOU, they save the PDC resources that would otherwise have to be spent taking the case to a hearing.

In the US criminal justice system, prosecutors, defense attorneys, and judges all recognize that it would be impossible for every case to go to trial. To manage this, prosecutors and defendants often agree to plea deals in cases where the evidence is strong that the defendant committed the charged violation. In a plea deal, both sides benefit. The defendant typically benefits from receiving a lighter sentence than they would receive if the case went to trial. The prosecution benefits by not having to put in the work necessary to bring a case to trial.

At the PDC, there is no analogous benefit for a respondent to sign an SOU. If a respondent declines to sign the SOU that staff offers, the respondent can simply show up to the hearing and say some combination of the following: “I forgot to file that form”, “I didn’t realize I had to file that form”, “I didn’t know how to file that form”, or “I thought I had filed that form”.

These defenses are not legitimate defenses to strict liability requirements. Probably 99% of all campaign finance violations are attributable to some combination of these reasons.

Upon hearing these defenses, the presiding officer typically reduces the penalty below what it would be compared to what the respondent would have had to pay if they had signed the SOU. This does not give respondents much of an incentive to save the agency time/resources by signing the SOU.

For a recent example of this, compare the outcome in Case #155462 (where the respondent took a case to a hearing and paid a $75 penalty) to the outcome in Case #156886 (where the respondent saved the agency resources by signing an SOU and paid a $100 penalty). Both cases were for late F1 filings. (I would also say that neither of these penalties establish a meaningful deterrence.)

To economize its own resources, the agency should change its enforcement policies. One solution would be to make it clear to respondents when the hearing notice is mailed that if they choose to take a case to a hearing in instances where there is no legitimate defense, that the respondent will face a much larger penalty than they would if they sign an SOU. This will incentivize more respondents to take advantage of the SOU process and ultimately save agency resources.

In the United States, an estimated 90-95% of criminal cases are resolved with plea deals. Without the incentives for defendants to agree to plea deals, the courts would be a dysfunctional/backlogged mess.

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Problem #2: Current suspended penalty levels are ineffective at getting filers to comply.

When the agency imposes penalties on filers, typically some portion of those penalties are suspended based on the respondent's compliance with the order issued by the Commission.

However, over 50% of the time, filers do not comply with the orders issued by the Commission in these cases, see link: https://www.pdc.wa.gov/sites/default/files/2024-07/CommentForBAPFINAL.pdf

This is evidence that the level of suspended penalties currently being imposed are not high enough to incentivize filers to come into compliance.

Additionally, after being fined, many filers still do not file the reports that they are required to file. Once a fine has been issued against a respondent, the agency is unable to pursue additional fines against the respondent beyond the suspended portion of the penalty that becomes immediately due.

The agency can solve this problem by increasing the suspended portion of penalties it imposes on filers.

Agency penalties across the board are low, and do not effectively incentivize filers to proactively comply with state law before enforcement hearings.

When the agency considers revising its penalty schedule, it should consider the agency's costs involved with bringing cases to enforcement hearings. As it stands today, I imagine that the agency is probably losing money when it conducts enforcement.

The agency should not be losing money when it conducts enforcement. It should be – at least – a break-even activity.

Problem #3: Resolve issues with collection of penalties.

From the data available on the agency's Open Data website - and from the comments made by Chair Hayward at last month's meeting – it sounds like the agency is experiencing some type of difficulty with collecting penalties.

It appears that these difficulties go beyond the normal difficulties faced by debt collectors who are often unable to collect from debtors because the debtors have no assets.

The agency should work towards resolving these difficulties.

If the agency is unable to collect the penalties that it imposes, it largely defeats the purpose of imposing penalties in the first place.

Penalties play an important role in creating incentives for filers to follow the law. This problem should be addressed immediately.