Written Comment for April PDC Regular Meeting
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1. Comment on Reporting Schedule Proposal

There are two big takeaways from the report on reporting schedules in other jurisdictions that was prepared by the PDC's legal intern.[1] The agency should discuss and act on these takeaways at Thursday's meeting as it continues to develop its proposal.

a. **The new reporting proposal should merge C3 (contribution) and C4 (expenditure) reports into a single joint activity report.** As shown in the report, having separate forms for contributions and expenditures is actually an unusual approach that is not followed in any of the other jurisdictions analyzed. Moving forward with a proposal that merges these two reports would greatly simplify the reporting process and would allow the agency to expand its new successful reporting notification/reminder system to cover all campaign finance reporting periods/reports. This would have a corresponding benefit to transparency and would hopefully pay dividends in the form of greater compliance and fewer PDC complaints being filed.

b. **The new reporting proposal should provide more time for treasurers to prepare reports, preferably 3 days.** In the jurisdictions analyzed in the report, campaigns were given an average of 5 days to file pre-election reports. Currently, in Washington State, campaigns only receive only 24 hours.

   The current 24-hour turnaround that exists during the heat of the campaign season significantly reduces the number of campaigns that a professional treasurer can take on. Filing these reports takes time, and treasurers must allow additional time for campaigns that do not timely/completely respond to the treasurer's requests.

   Implementing this change would allow professional treasurers to take on additional clients. While professional treasurers are not perfect, they make far fewer errors and omissions compared to inexperienced filers. If professional treasurers are allowed to serve a greater percentage of campaigns, there would be a smaller overall percentage of noncompliance. This should greatly reduce the number of complaints that the agency is required to process, which I understand is a current concern of the agency.

[1] https://www.pdc.wa.gov/sites/default/files/2025-04/06.02.Comparing%20Reporting%20Requirements.pdf

I hope the agency recognizes the need to compromise with the regulated community (including treasurers) if it wants to be able to get a reporting schedule reform proposal through the Legislature.

Related to this point, the agency's latest proposal would increase the number of C4 reports that campaigns must file in a year from 12 to 16. This is a significant increase that will add to the amount of work that treasurers already perform. The cost of this will have to be passed along to campaigns, many of which are already complaining about the high cost of compliance. Unfortunately, it is the small (typically non-incumbent) campaigns that can least afford these costs that will suffer most.

There are large periods of time in the calendar when there is little to no interest in the financial activity that campaigns report because no-one is voting. There is no reason that the agency could not retain the current overall number of C4 reports that are due in a year while still maintaining transparency for voters.

Another consideration is that the agency staff are already either unable or unwilling to enforce current reporting deadlines. Adding additional deadlines in the reporting calendar will likely make that bad problem even worse.

In recent years, the PDC has not had the greatest track record when it comes to passing legislation. There is little appetite in Olympia (from either side of the aisle) for making campaign reporting requirements even more burdensome than they already are. The PDC should consider altering its next proposal to recognize this prevailing political reality.

2. Comment on Rulemaking Proposal re: Enforcement Procedures

The Commission should engage in rulemaking on this subject. However, the proposal put forward by agency staff should be rejected outright.

The problems with the staff's rulemaking proposal are summarized below, and an alternative approach is proposed below that.

a. Proposed increases to penalty schedule are too small to be meaningful.

The proposed increases to the penalty schedule are far too small to serve as a meaningful deterrent for filers, especially when ~90% of the time these types of violations are just dismissed administratively by staff with no penalties being imposed. Additionally, the proposed increases for subsequent violations of the same requirement are especially timid.

The agency's penalty schedule is also tremendously ill-suited for the most common type of violation that the agency deals with: late C3/C4 reporting. Rather than a penalty schedule

that focuses on individual late reports (regardless of the amount disclosed on those reports), the agency should adopt a penalty formula along the lines of Oregon[2] that calibrates the penalty to the amount of activity that was not timely disclosed.

b. Adding "participation in PDC training course" factor makes no sense.

Because staff have not described the presence of this factor as being either aggravating or mitigating, it is open to divergent interpretation. Based on previous discussions, I assume staff intend for it to be a mitigating factor. This makes absolutely no sense.

Consider this: if a filer attends a PDC training course that educates the filer about a particular requirement, and then that filer proceeds to violate the requirement they were just educated on, why on earth should that be considered a mitigating factor?

An alternative approach would be to adopt a rule (or publish online guidance) that states that it is the PDC's expectation that filers attend PDC training at the beginning of their campaigns. As Chair Leach pointed out several months prior, the PDC has no independent statutory authority to enforce such a requirement. However, if a filer violates a requirement and there was no record of their attending a PDC training, their failure to attend such a training could properly be considered by the agency as an aggravating factor in the context of enforcement proceedings.

c. Alternative proposal – eliminate factors and apply penalty formula

One of the primary problems with the agency's reliance on the "factors" approach to determining when administrative dismissals are appropriate is this: the factors are used by staff to justify whatever outcome the staff want in a particular case.

For example, if the staff don't like the partisan affiliation of a particular respondent, they can focus on the aggravating factors that are present and ignore the mitigating factors to reach the conclusion that the case shouldn't be dismissed and should instead be referred to the Commission for a hearing and a penalty.

More commonly however, the motivation of staff is to simply justify dismissing as many cases as possible to avoid the tremendous amount of work that would otherwise be necessary to bring those cases to hearings. So, the staff focus on the mitigating factors,

[2] Oregon's approach is to penalize filers based on the following formula: take 1/2% of the total amount of activity that was not timely disclosed and multiple it by the number of days late. If the total amount of the projected penalty is under $50, the case is just dismissed outright.

Under Oregon's approach, as an example, if a filer failed to timely disclose $100,000 and missed the deadline by 7 days they would be fined $3500.

ignore the aggravating factors, and conveniently reach the conclusion that the case should just be dismissed administratively.

This works well for staff because there is no recourse whatsoever for complainants or respondents who feel that the staff have misapplied the factors contained in WAC 390-37-061. Additionally, the agency staff are not subject to any meaningful oversight from the Commissioners as to how they have applied the factors at issue.

To correct these problems, the agency should adopt an approach similar to the one utilized by successful neighboring campaign finance agencies, like the one in Oregon.

If a filer has failed to timely file a report, the agency should take 1% of the total amount of activity not timely disclosed and multiply it by the number of days late to arrive at an assessed penalty. If the assessed penalty falls below a certain threshold (say $100) and the report at issue was submitted before the election, the case should be dismissed.

If the assessed penalty is above that threshold however, the filer ought to be provided with the opportunity to provide a compelling reason for why the violation should be excused. The agency should make it clear to violators that a failure to understand the law or “being busy with other things” are not compelling reasons. The only reason that the agency should accept for failing to file a report on time is when the filer was genuinely unable to file on time because of medical issues, natural disasters, etc.