



**State of Washington  
PUBLIC DISCLOSURE COMMISSION**

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**MINUTES – Regular Meeting**

Evergreen Plaza Building, Room 206  
711 Capitol Way South  
Olympia, Washington

9:30 a.m.

**March 24, 2016**

**COMMISSION MEMBERS PRESENT**

Katrina Asay, Chair  
Anne Levinson, Vice Chair  
Grant Degginger, Member  
John Bridges, Member

**STAFF PRESENT**

Evelyn Fielding Lopez, Executive Director  
Lori Anderson, Communication and Training Officer  
James Gutholm, Chief Information Officer  
Penny Allen, Assistant Attorney General  
Chad Standifer, Assistant Attorney General  
Jim Coleman, Information Technology Specialist  
Kyle Veldhuzien, Information Technology Specialist  
Jana Greer, Executive Assistant

The regular meeting of the Public Disclosure Commission was called to order by Commission Chair Katrina Asay at 9:30 a.m. in the Evergreen Plaza Building, Room 206 Olympia, Washington.

**Opening Comments**

Commissioner Asay called the meeting to order at 9:30 a.m.

**Citizens Comments/Concerns**

No comments or concerns were expressed.

**Commissioner Comments/Concerns**

No comments or concerns were expressed.

**Meeting Minutes**

February 25, 2016 Regular Meeting

**Motion 16-14**

Moved by Commissioner Degginger, seconded by Commissioner Levinson that:

**The Commission approve the February 25, 2016 regular meeting minutes.**

The motion passed 3 votes to 0. Commissioner Bridges abstained from voting as he did not attend the February 25, 2016 regular meeting.

March 10, 2016 Special Meeting

**Motion 16-15**

Moved by Commissioner Levinson, seconded by Commissioner Degginger that:

**The Commission approve the March 10, 2016 special meeting minutes.**

The motion passed 3 votes to 0. Commissioner Asay

abstained from voting as she did not attend the March 10, 2016 special meeting.

### **Lobbyist Application Demonstration**

James Gutholm stated that the current lobbyist application is the oldest of the PDC applications, 14 years old. In 2007 a feasibility study proved that the application was outdated and was going to cost an estimated \$500,000 to replace.

Mr. Gutholm noted that the PDC continues to face these same problems, users of the existing application are actually reverting to paper filing because the application does not work for them.

Lobbyists participated in meetings with IT staff where they provided input on the rebuild of the lobbyist application. Stakeholders also provided input via email.

Jim Coleman and Kyle Veldhuzien presented and demonstrated an online interactive view of the new lobbyist application highlighting the core functionality. Mr. Coleman noted that styling is not complete at this stage and will be completed.

The expected launch of the lobbyist application is the end June 2016.

### **Strategic Plan**

Evelyn Fielding Lopez reviewed the draft PDC 2016-2017 strategic plan, highlighting the goals and objectives which derived from the Commission's work session at the end of January.

Ms. Lopez stated that the plan was expanded into an 18-month plan to allow for time to complete all of the items identified. She noted that the current draft is in many ways a "to Do" list of what the organization needs to go forward. The Commission and staff will want to prioritize the high priority items and how to best accomplish these.

Commissioner Levinson stated that measurements will need to be added to each of the items. Showing what the struggles and barriers are and what the plan is to fix it.

Commissioner Degginger stated that this draft seemed more like a work plan than a strategic plan. He suggested utilizing the PDC annual report as a tool to identify the items in the strategic plan and talk about the potential solutions. This will help to create a dialogue with the regulated community and the legislature about how to solve some of these issues.

Commissioner Levinson stated that it is important to also verify that the PDC has the tools to accomplish the goals that are listed.

The Commission asked staff to reformat the strategic plan

highlighting how deliverables will be achieved and what the limitations are.

### Rulemaking

#### Petition for Rulemaking by AUTO

Evelyn Fielding Lopez stated that the PDC has been asked to make a rule by the Automotive United Trades Organization (AUTO). Initially they did not submit proposed language but have subsequently provided an option for review. The Commission would have the option of using AUTO's language, or different language if rulemaking activity was entered into.

Staff recommended against entering into rulemaking and believes that this rule would be outside of the agency's scope of authority.

Tim Hamilton, Executive Director for AUTO addressed the Commission on behalf of AUTO. He stated that AUTO disagrees with the PDC staff recommendation on all points.

#### Motion 16-16

Moved by Commissioner Levinson, seconded by Commissioner Bridges that:

**The Commission not enter into rulemaking on the petition as requested and that the subject matter exceeds the Commission's scope of authority.**

The motion passed

### Reporting Modification (New)

*Daniel J. Shih* – Candidate for State Representative, 43<sup>rd</sup> Legislative District

Jennifer Hansen presented Daniel Shih's request for a new reporting modification.

Mr. Shih is requesting a reporting modification that would exempt him from disclosing the business customers that paid \$12,000 in the previous 12 months to Susman Godfrey LLP, a law firm. Mr. Shih is an attorney with Susman Godfrey with a 0.40% ownership and is not a managing partner or part of the firm's Executive Committee.

Mr. Shih provided a list disclosing his clients, clients whose interests would be significantly affected by his actions if elected as a State Representative, clients who are identified in court files or other public sources, and the firm's governmental clients.

Staff recommends approval of the request for a reporting modification.

#### Motion 16-17

Moved by Commissioner Degginger, seconded by Commissioner Bridges that:

**The Commission grant the partial reporting modification as requested, finding that literal application would**

**cause a manifestly unreasonable hardship on the applicant and that a limited modification would not frustrate the purposes of the act.**

The motion passed

The Commission went into Executive Session at 11:45 a.m. to discuss pending and potential litigation with legal counsel. Possible action regarding pending litigation following the executive session.

The Commission returned to the meeting at 1:02 p.m.

### **Executive Session/Working Lunch**

### **Enforcement**

Dispositive Motion Hearing | *Aaron Reardon, PDC Case 12-160* PDC staff alleges that Aaron Reardon, former Snohomish County Executive, violated former RCW 42.17.130 by using the facilities of Snohomish County to assist his 2011 re-election campaign.

Jim Johansen, Attorney representing Aaron Reardon in PDC Case Mo. 12-160 participated via teleconference.

Commission Chair Asay acknowledge that the Commission received:

- A Motion to dismiss from Aaron Reardon
- Staff's response to Mr. Reardon's Motions
- A Reply Brief from Mr. Reardon

Commissioner Asay confirmed that no other items had been filed.

Jim Johansen, representing Aaron Reardon, argued for his Motion to Dismiss the PDC's complaint. Mr. Johansen stated that the notice of the Administrative charges filed on December 2, 2012, the complaint, is statutorily defective. He noted that the Commission's staff cites RCW 42.17A as the statute which applies to this preceding. The RCW cited became effective January 1, 2012, but the alleged misconduct by Mr. Reardon listed in the violations occurred during his campaign in November of 2011 prior to the enactment of RCW 42.17A.

Mr. Johansen stated that statutes are cited as authority in the complaint, and the enforcement hearing notice cites statutes that were not in existence at the time of the alleged misconduct. Mr. Johanson also argued that under the statutes in effect in 2011, the highest penalty that the PDC could impose would be a penalty of \$4,200.

Mr. Johanson moved to dismiss the complaint because it did not appropriately notify the respondent of the laws he had allegedly violated; alternatively, the respondent moved for summary judgment.

AAG Chad Standifer, representing PDC staff, requested that the Respondent's Motion be denied. The Respondent was properly notified of the allegations against him, and the

complaint noted that the number of the statute had changed in 2012, but the substance remained the same. He further argued that while the penalty limit increased from \$4,200 to \$10,000 in 2012, it would be appropriate for the higher penalty to be used in this matter because the statutory change is remedial in nature and therefore may be applied retroactive to the period before 2012. With regard to the Motion for Summary Judgment, the Respondent has not carried his burden of proving that there are no disputed issues of material fact such that Summary Judgment is appropriate.

Commission Staff requested the Commission deny the Respondent's Motion and the matter should proceed to hearing.

The Commission went into deliberations at 1:35 p.m. and returned at 1:40 p.m.

Commissioner Levinson stated that she had listened to all the interviews and read all the pleadings and exhibits. Respondent Reardon asks the Commission to rule on three arguments:

- whether he received adequate notice;
- whether the penalty amount described by the staff in the Notice of Administrative Charges is based on an inappropriate retroactive application of the current statute rather than on the statute in effect at the time of the alleged violations in 2011; and
- whether no material facts are in dispute and the record is clear that respondent Reardon did not violate the law, warranting dismissal of the case prior to full hearing.

#### **AS TO WHETHER THE NOTICE WAS ADEQUATE**

Respondent Reardon received the Notice of Administrative Charges in early December, 2015. While the Notice of Charges and Notice of Hearing may have been drafted somewhat ambiguously, there is in fact no material difference between the two statutes in terms of the respondent's obligations under the law. Each statute prohibited a candidate from using government facilities to further a campaign. The only change relevant here is the recodification of the statute. Under either RCW 42.17.130 or under RCW 42.17A.555, respondent Reardon had notice that he was being charged with the inappropriate use of county facilities. The notice is sufficient and provided the respondent with a meaningful opportunity to address the issue of whether he misused County resources in his 2011

campaign.

**WHAT PENALTY AMOUNT APPLIES?**

The penalty applicable should be pursuant to the penalty amount in effect at the time the alleged violations of law occurred. Respondent argues he was prejudiced because he had to hire an attorney due to the lack of clarity about what the penalty amount might be, and that this prejudice justifies dismissal. The expense of retaining defense counsel does not constitute prejudice warranting dismissal; further, he presented no record on point.

**MOTION FOR SUMMARY JUDGMENT**

Respondent Reardon argues alternatively that none of the three alleged violations (use of his County office for campaign purposes, hiring of staffer Hulten to work on his campaign on County time, and use of his County cell phone for campaign purposes) are supported by material facts. He supports this argument by asserting either each witness was not credible or did not support the allegation and urges the Commission to find that no material facts remain and the matter should be dismissed.

He has failed to establish that there are no material facts at issue. In fact there are still many material facts at issue. He failed to affirmatively show that he did not commit any of the alleged violations through any additional information or even his own declaration. In construing the facts and any inferences in light most favorable to the non-moving party, he has not met his burden to establish there are no material facts in dispute.

The respondent had adequate notice, and his obligations under the law were clear. Both the motions for summary judgment and for dismissal should be denied. The matter should proceed to a full hearing.

Commissioner Degginger stated that he concurred with Commissioner Levinson in all respects, including that the penalty limit from the 2011 schedule is appropriate.

Commissioner Bridges stated that he agreed with both Commissioners Levinson and Degginger. When looking at notices, the notice needs to give parties notice of the issue and provide an opportunity to be heard. Commissioner Bridges noted that he could not imagine that Mr. Reardon does not understand what the allegations are against him. He further noted that with regard to the penalties, the Commissioners were all in agreement that the prior statute outlines the appropriate penalties and that there remain

genuine issues of material fact in the case.

**Motion 16-18**

Moved by Commissioner Asay, based on the consensus of all the Commissioners, that:

**The Commission deny the Motion to Dismiss, however the Commission finds that penalty amounts under RCW 42.17A.555 will not be applied retroactively; therefore, the maximum penalty at issue is \$4,200. The Commission also denies the Summary Judgment as material facts exist.**

The motion passed. Commissioner Asay further noted that this was a unanimous decision.

**Staff Reports**

Executive Director

Evelyn Fielding Lopez provided an update on cases being tracked in Freshdesk. She discussed the progress and status of cases and complaints.

Chief Technology Officer

James Gutholm discussed the recent updates to the F1 Financial Affairs electronic application. It now accepts electronic signatures, and staff no longer has to wait for signature cards to arrive via the mail.

Customer Service

Lori Anderson noted that a temporary data entry staff person will be added to assist with the backlog of information that needs to be completed. It is anticipated the temporary staff will be needed for one to two months.

**Adjourn**

The meeting adjourned at 2:25 p.m.

**APPROVED April 28, 2016**