

State of Washington
PUBLIC DISCLOSURE COMMISSION
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MINUTES – Regular Meeting

9:30 a.m. | September 22, 2016
Evergreen Plaza Building, Room 206
711 Capitol Way
Olympia, Washington

Commission Members Present

Anne Levinson, Chair; Johns Bridges, Vice Chair; Katrina Asay, Member; Jack Johnson, Member

Staff Present

Evelyn Fielding Lopez, Executive Director; Penny Allen, Assistant Attorney General; Kurt Young, Compliance Officer; Tony Perkins, Compliance Officer; Jennifer Hansen, Filer specialist; James Gutholm, Chief Information Officer; Lori Anderson, Communications and Training Officer; Jana Greer, Assistant.

The regular meeting of the Public Disclosure Commission was called to order by Commission Chair Anne Levinson at 9:30 a.m.

Public Comments

There were no public comments.

Meeting Minutes

August 25, 2016 Regular Meeting | [PDC Mtg Video](#)

Motion 16-44 Moved by Commissioner Johnson, seconded by Commissioner Bridges that: The Commission approve the August 25, 2016 regular meeting minutes as revised.

The motion passed.

Advisory Matter | *Consideration of possible new interpretation addressing whether an advertisement that includes photographs and other neutral content copied from a candidate's campaign website is a contribution to the candidate.* | [PDC Mtg Video](#)

Staff reported back on several of the proposed rule-makings requested by the Commission. Last year the Commission submitted an agency bill request that would have allowed an amendment to the definition of contribution. The bill was not successful.

In response to the Commission's interest in modernizing the definition of contribution, to align with current PDC practices, staff presented a draft interpretation that would allow copy/pasting of a photograph from a candidate's website, used in a political advertisement, to not be considered a contribution provided there had been no coordination with the candidate or agent.

Staff recommended adoption of the proposed interpretation with suggested revisions.

Commissioner Johnson suggested changing "Photograph" to "Images", or "Graphic Content".

Staff suggested the minor change be considered as a revised interpretation for the Commission's consideration and adoption.

Motion 16-45 Moved by Commissioner Johnson, seconded by Commissioner Asay that: The Commission adopt the Interpretation with the amendments as discussed.

The motion passed.

Rulemaking | *Discussion – possible updates to enforcement rules, Chapter 390-37 WAC* | [PDC Mtg Video](#)

In past Commission meetings the Commission expressed interest in adopting more penalty schedules to address additional subjects than the current schedules address, adding language that would allow more consistency in assessing penalties and for expanded use of Statements of Understanding.

When drafting a single penalty schedule that would address all of the different subjects that may arise in enforcement, staff had concerns that a single schedule may not set enough of an expectation for respondents and asked the Commission for their input.

Staff included an option for consideration where the base penalty is noted and points are added based on the nature of the potential violations to factor into the final penalty.

Commissioner Johnson stated that the penalties should correlate to the goals of our system, and asked staff to research to see if there is an example of a model in state enforcement or regulatory setting that could be used. Assistant Attorney General Allen noted that WISHA (Washington Industrial Safety and Health Act) may have an example worth reviewing. WISHA does use a penalty calculation very similar to this.

Commission Chair Levinson suggested an additional option for consideration, a more singular approach to assist with balancing interests. Is there a middle approach of using a single schedule with amounts, giving the Commission more discretion to weigh factors such as good faith or level of egregiousness or level of effect on the public?

Staff will reach out to the regulated community for input on the proposed options and bring draft language to the Commission at the October meeting for consideration and approval.

Next Steps/Follow Up: Staff will provide the regulated community with an example of the penalty schedule discussed at the meeting for input on replacing the current penalty schedules with one comprehensive schedule.

Rulemaking | *New WAC 390-16-236 surplus funds and amended WAC 390-16-234* | [PDC Mtg Video](#)

Staff presented draft language for consideration and approval of WAC 390-16-236, a new rule that would set reporting requirements for surplus funds accounts; and proposed amended language to WAC 390-16-234, a rule which allows transfers between candidates to reimburse for joint campaign expenditures.

The Commission had expressed interest in eliminating the current practice of one candidate paying the full amount of joint campaign expenses and being reimbursed by other candidates who share in those expenses because this approach can have the effect of lack of disclosure of reason for the expense or delay in reporting the expense. Currently WAC 360-16-234 allows this.

Staff provided examples of situations where it may not be possible for multiple candidates to each pay directly and where one may need to pay in advance. The staff's proposed rule focused on ensuring immediate reporting.

Staff recommended approval of the proposed draft language.

Commissioner Asay suggested the time frame for reporting the transfer be changed to within two business days of the expenditure.

Commission Chair Levinson suggested changing the header to “Transfers of Candidate Funds” rather than “Surplus Funds” since this rule is for all transfers.

Commissioner Levinson also suggested additional language that makes it clear that the same level of detailed disclosure as to the purpose of the transfer expense is required as would be if it were a direct expenditure.

Motion 16-46 Moved by Commissioner Asay, seconded by Commissioner Bridges that:
The Commission adopt WAC 390-16-236 as amended.

The motion passed.

Rulemaking | Amend WAC 390-16-234 Transfers of surplus and no surplus candidate funds | [PDC Mtg Video](#)

In response to the Commission’s interest in setting reporting due dates for surplus funds account reports when money is expended from the account, staff drafted new language for WAC 390-16-234 for the Commission’s consideration and approval.

The proposed language requires registration of a surplus funds account within two weeks of when it is created. This aligns with candidate registration requirements.

Motion 16-47 Moved by Commissioner Asay, seconded by Commissioner Bridges that:
The Commission adopt WAC 390-16-234 as amended.

The motion passed.

Lobbyist Application Demonstration | [PDC Mtg Video](#)

James Gutholm demonstrated the new lobbyist application. He accessed the online software and walked through what the user and end user would experience and see.

Commissioner Levinson noted that these are tremendous improvements and thanked the I T team for their efforts.

Strategic Plan Update | [PDC Mtg Video](#)

Executive Director Lopez reported on the status of the agency strategic plan items. The strategic plan began in January of 2016 and is intended to go through June of 2017.

Ms. Lopez noted that the plan is more of a work-list and highlighted the items that are complete and the status of what items are left to do.

Staff will continue to provide the Commission with updates as the work progresses.

Request For Review/Reconsideration | *PDC case no. 6791 | Angel Jordan, a candidate for State Representative in the 41st Legislative District in 2016, is seeking a review/reconsideration by the Commission of an August 18, 2016 Order entered in a Brief Enforcement Hearing in PDC case No. 6791 for failing to file a Candidate Registration (C-1 report) within two weeks of declaring his candidacy.* | [PDC Mtg Video](#)

Kurt Young presented Angel Jordan’s request for review of an initial Order entered on August 18, 2016 at a Brief Adjudicative Proceeding in PDC case 6791.

Angel Jordan participated via telephone.

Mr. Young stated that Mr. Jordan is a college student and was a first time candidate for public office in 2016 and that he was unaware of the many things he had to do in order to run for office, including complying with the PDC laws and rules and filing the C-1 and F-1 Reports.

Mr. Jordan has since filed the missing C-1 report selecting the mini-reporting option and that he was the only officer or principal decision maker.

Staff recommended the Commission affirm the August 18, 2016 initial Order but suspend the entire \$250 penalty assessed against Mr. Jordan on the condition he commits no further violations of RCW 42.17A or WAC 390 for four years from the date of the Order.

Motion 16-48 Moved by Commissioner Johnson, seconded by Commissioner Asay that:

The Commission affirm the decision of the initial Order and suspend the \$250 penalty on the condition that no further violation of RCW 42.17A or WAC 390 is committed within four years from the date of the final order.

Commissioner's Johnson, Levinson, and Asay voted Yes and Commissioner Bridges voted No.

The motion passed 3 to 1.

Commissioner Bridges stated that Mr. Jordan disregarded everything that the PDC and the State of Washington expects a candidate to do. There are consequences for not complying.

Request For Review/Reconsideration | *PDC case no. 6786 | William Hirt, a candidate for Governor in 2016, is seeking a review/reconsideration by the Commission of an August 18, 2016 Order entered in a Brief Enforcement Hearing in PDC Case No. 6786 for failing to file the Candidate Registration (C-1 report) and Personal Financial Affairs Statement (F-1 report) within two weeks of declaring his candidacy* | [PDC Mtg Video](#)

Mr. Young presented PDC case 6786, William Hurt's request for review of an initial order entered on August 18, 2016.

Mr. Hirt was found in violation of RCW 42.17A for failing to file a candidate registration C-1 report and for failing to file a personal financial affairs statement F-1 report within two weeks of declaring his 2016 candidacy no later than June 3, 2016.

Mr. Hirt did not participate in the hearing.

Mr. Young stated that on August 22, 2016 Mr. Hirt sent an email to PDC staff concerning the missing reports, the violations, and the penalty assessed.

Mr. Hirt added in a September 1, 2016 email to PDC staff that he has never accepted a single contribution to his campaign and requested that the Commission review the Order and Penalty assessed against him in this matter.

Staff recommended the Commission affirm the August 18, 2016 initial Order.

Motion 16-49 Moved by Commissioner Asay, seconded by Commissioner Johnson that:

The Commission affirm the initial Order in PDC case no. 6786.

The motion passed.

Review Proposed Legislation | [PDC Mtg Video](#)

Executive Director Lopez reported on agency proposed legislation and next steps.

Campaign Finance Reporting

Goals that the Commission is trying to achieve are:

- Eliminate the reports that seem to catch campaigns off-guard regularly, the 7 days before an election and 21 days before the election special report.
- Have year-round accelerated reporting for contributions of \$10,000 or more. This will be most impactful on initiative and political committees.
- Repeal the provision struck down by the court regarding timing for large contributions given to a committee right before a general election.

Financial Reporting

- Various changes to the F-1 reporting requirements.
- Allow a modification to last for the term of the office of the person rather than renewing annually.
- Change values used for reporting investments.
- Modify the scale for the evaluation value of assets.
- Clarify the statute so that it clearly allows the Commission to order a respondent to take specific action to comply with campaign finance laws rather than just to cease non-compliance.

Inflationary Amounts

Taking two amounts out of the regular inflationary increase.

- The threshold amount for reporting electioneering communications and independent expenditures would remain at \$1,000.
- The Cash contribution amount that a campaign can accept in currency would be frozen at \$100.

Executive Director Lopez has met with Legislators in Central and Eastern Washington to discuss the concepts for agency request legislation and will continue to share information with them to see if they have any concerns or would like to support or sponsor.

Next Steps/Follow Up: The drafts have been returned from the Code Reviser's Office and will be shared with stakeholders for input.

Staff Reports

Communications and Training Officer | [PDC Mtg Video](#)

Lori Anderson had nothing to add to the written report she submitted with the meeting materials.

Executive Director | [PDC Mtg Video](#)

Executive Director Lopez announced that Lori Anderson, Communications and Training Officer has accepted a position at the Department of Early Learning as a Regulatory Analyst. Lori will be with the PDC through November 1, 2016 so the Commission will have an opportunity to applaud her great work at the October meeting.

Chief Technology Officer | [PDC Mtg Video](#)

James Gutholm thanked Lori for all of her instrumental work she has done throughout the agency.

The open access project progresses forward. The stakeholder process will be started before Lori Anderson's departure. Contacts will include input from others with technical expertise in addition to our regulated community.

Compliance | [PDC Mtg Video](#)

Executive Director Lopez updated the Commission on the status of cases. There are 31 open matters as of September; of these cases there are some that staff may be able to resolve quickly.

The high increase in 45-day Citizen Action letters has impacted staff's ability to get other pending items completed.

The 45-Day Citizen Action letter process is creating a process challenge as well in clear communication with the Attorney General's Office on when the PDC should move forward with preliminary review of a letter if it has not yet been formally referred by the AGO, especially because only a few weeks of investigation time is permitted.

The PDC often has to begin reviewing a matter prior to a formal referral in order to give input to the AGO in a timely manner.

The AGO has announced that a Campaign Finance Unit is being established. This may result in fewer of the 45-Day Citizen Action letters coming to the PDC for review.

Executive Session | [PDC Mtg Video](#)

The Commission went into executive session at 12:00 p.m. to discuss matters allowed in executive session pursuant to RCW 42.30.110, including but not limited to discussion of enforcement matters, pending and potential litigation with legal counsel, and review of performance of public employees.

The Commission returned to the public session at 1:00 p.m.

Enforcement/Report to Commission | (45-Day Citizen Action Complaint) Cindy Larsen, PDC case no. 6928, two public complaints and one citizen action notice alleging violations of RCW 42.17A by Ms. Larsen in connection with unreported in-kind contributions from the political committee "A Safer Snohomish County". | [PDC Mtg Video](#)

Tony Perkins presented staff's findings, conclusions, and recommendations regarding the allegations contained in PDC Case 6928.

Staff's investigation followed a public complaint against Ms. Larsen filed with the Public Disclosure Commission on July 25, 2016 by Beth Lucas, a second complaint filed with the PDC on August 4, 2016 by Melissa Day, and a 45-Day Citizen Action notice complaint filed with the Attorney General and Snohomish County Prosecutor on August 21, 2016 by Robert Schiffner.

The complaints alleged that the political committee "A Safer Snohomish County" sponsored a mailing to promote Snohomish County Proposition 1, and that this mailing assisted the campaign of Cindy Larsen for Snohomish County Superior Court Judge through two photographs. The complainants alleged that Ms. Larsen failed to disclose these expenditures as in-kind contributions to her campaign.

PDC staff recommended that the Commission find that the committee's expenditures constituted electioneering communications and in-kind contributions that Ms. Larsen failed to

disclose as required under RCW 42.17A.240, and that additionally exceeded Ms. Larsen's contribution limits under RCW 42.17A.410.

Staff recommended that the Commission recommend to the Washington Attorney General that the AGO take appropriate action concerning the apparent violations.

PDC staff noted that in his August 21, 2016 Citizen Action Notice, Robert Schiffner did not notify the Washington State Attorney General and Snohomish County Prosecutor of an intent to sue any person other than Cindy Larsen. If the Commission accepts staff's recommendation and finds apparent violations of RCW 42.17A.240 and RCW 42.17A.410 by Ms. Larsen, this finding may point to possible violations by "A Safer Snohomish County" for making contributions which exceeded the limits of RCW 42.17A.410. In that case, the Commission may wish to direct staff to open a separate case for the political committee, and schedule an adjudicative proceeding or report to the Commission for a future meeting.

Greg Wong, Counsel for Cindy Larsen was present and addressed the Commission.

The Commission went into Executive Session to consult with counsel at 1:22 p.m. and returned to the open meeting at 1:35 p.m.

Motion 16-50 Moved by Commissioner Bridges, seconded by Commissioner Asay that: The Commission return the 45-Day Citizen Action letter, PDC case no. 6928, to the Attorney General with a recommendation to take action as to Ms. Larson. [PDC Mtg Video](#)

The motion passed.

Motion 16-51 Moved by Commissioner Bridges, seconded by Commissioner Asay that: The Commission return the 45-Day Citizen Action letter filed by Robert Schiffner to the Attorney General without a recommendation. [PDC Mtg Video](#)

After discussion, Commissioner Bridges withdrew the motion.

Motion 16-52 Moved by Commissioner Johnson, seconded by Commissioner Asay that:

The Commission retain jurisdiction of the issues presented by the 45-Day Citizen Action letter filed by Robert Schiffner, until the Attorney General's Office concludes its review of the first part of this matter pursuant to its authority under the 45-Day Citizen Action statute, at which time the Commission will consider proceeding with an investigation to address those possible violations through the PDC's usual investigation jurisdiction.

The motion passed. [PDC Mtg Video](#)

Enforcement/Report to Commission | *(45-Day Citizen Action Complaint) PDC case no. 7823, citizen action notice alleging violations of RCW 42.17A and RCW 42.56 by Sound Transit by inadvertently disclosing exempt ORCA card holder email addresses which were used in support of the Sound Transit 3 ballot measure.* [PDC Mtg Video](#)

Kurt Young presented staff's findings, conclusions, and recommendations regarding the allegations contained in PDC Case 7823. This case resulted from a 45-Day Citizen Action Complaint (Complaint) filed on August 20, 2016 by Conner Edwards with the PDC, Washington State Attorney General, and the King County Prosecutor.

The Complaint alleged that Sound Transit may have violated RCW 42.17A.555 by using public facilities or resources in support of the Sound Transit 3 (ST3) ballot measure.

The complaint also alleged that Sound Transit may have violated RCW 42.56.330(5) by Releasing information that was exempt from disclosure under the Public Records Act.

Staff recommended that the Commission determine that there is an apparent violation of the State's Campaign Finance Laws and recommend the Attorney General take appropriate action.

With regard to possible violations of RCW 42.56.330(5), Staff recommended the Commission take no action.

Desmund Brown, Counsel for Sound Transit, was present and addressed the Commission.

Conner Edwards, the Complainant, was present and addressed the Commission.

Motion 16-53 Moved by Commissioner Johnson, seconded by Commissioner Asay that:

The Commission return the 45-Day Citizen Action letter, PDC case no. 7823, to the Attorney General with no recommendation. [PDC Mtg Video](#)

After discussion, the motion failed 2-2.

Motion 16-54 Moved by Commissioner Bridges, seconded by Commissioner Levinson that:

The Commission return the 45-Day Citizen Action letter, PDC case no. 7823, to the Attorney General with a recommendation for no further action. [PDC Mtg Video](#)

The motion passed.

Commissioner Bridges raised the point that the complaint had also alleged a possible violation of the Public Records Act.

Commissioner Levinson noted that the PRA is not within the PDC's jurisdiction, so it would be appropriate to address that aspect of the complaint accordingly.

Moved by Commissioner Bridges, seconded by Commissioner Johnson that:

The Commission return to the AGO without recommendation the aspect of the complaint regarding the allegation that Sound Transit may have violated RCW 42.56.330(5) by releasing information that was exempt from disclosure under the Public Records Act.

Process Discussion

This matter was held over to a future meeting. Executive Director Lopez will also conclude the strategic plan updates for which there was not time today at the next meeting or via interim reporting.

The meeting adjourned at 2:41 p.m.

Minutes approved on October 27, 2016.