

**State of Washington**  
**PUBLIC DISCLOSURE COMMISSION**  
**711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908**  
**(360) 753-1111 • FAX (360) 753-1112**  
**Toll Free 1-877-601-2828 • E-mail: [pdcc@pdcc.wa.gov](mailto:pdcc@pdcc.wa.gov) • Website: [www.pdc.wa.gov](http://www.pdc.wa.gov)**

**MINUTES – Regular Meeting**

9:30 a.m. | March 28, 2019

Evergreen Plaza Building, Room 206

711 Capitol Way

Olympia, Washington

**Commission Members Present**

Anne Levinson, Chair; David Ammons, Vice-Chair; Bill Downing, member; Russell Lehman, member.

**Staff Present**

Peter Lavalley, Executive Director; BG Sandahl, Deputy Director; Kim Bradford, Communications and Outreach Director; Sean Flynn, General Counsel; James Gutholm, Chief Information Officer; Jana Greer, Administrative Officer; Kurt Young, Compliance Officer; Phil Stutzman, Compliance Officer; Alice Fiman, Compliance Officer; Jennifer Hansen, Compliance Officer; Chad Johnson, Budget Analyst, Department of Enterprise Services; John Meader, Assistant Attorney General.

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

**Public Comments | [PDC Meeting Video](#)**

- **Cheryl Aichele** (via telephone)

Cheryl Aichele expressed her preference that the PDC complaint process offer an opportunity for the complainant to appeal agency decisions.

Ms. Aichele believes others have retaliated against her due to the complaints she has filed with the PDC and would like the Commission to be aware this has occurred. She noted that the complaint process itself does not allow for the complainant to be involved in the investigation and this could allow for mistakes and errors to be made. She feels that warning letters are insufficient and that some PDC cases are not thoroughly investigated.

Ms. Aichele has an upcoming meeting scheduled with PDC staff regarding an existing complaint she has filed and hopes that after discussing her concerns she will have a clearer understanding of the process and feel more confident about the PDC.

Chair Levinson invited Ms. Aichele to provide additional feedback after the meeting with PDC staff next week.

- **David Streeter** (in-person)

David Streeter, Public Policy Director for Washington Nonprofits, thanked the Commission and staff for incorporating recommendations Washington Nonprofits submitted regarding the proposed rules for SSB 5991, including the amendments in [WAC 390-16-013](#), dissolution procedures. This language change will be helpful for non-profits in understanding that dissolution in this context is for PDC purposes only.

He noted that PDC staff has also taken into consideration Washington Nonprofits'

comments and feedback offered on PDC guidance and interpretation documents and that he will review the recent draft and follow-up with the staff with any additional comments or suggested changes.

**Meeting Minutes | [PDC Meeting Video](#)**

The Commission considered approval of the February 28, 2019, regular meeting minutes.

**MOTION 19-013** Moved by Commissioner Ammons, seconded by Commissioner Downing that:

**The Commission approve the February 28, 2019, regular meeting minutes as presented.**

The motion passed 4-0.

**Proposed Stakeholder Engagement Plan for Commission Consideration of F-1 Online Publication | [PDC Meeting Video](#)**

Communications and Outreach Director Kim Bradford summarized the discussions that were held at previous Commission meetings last fall regarding potential publication of F-1's where the Commission had been briefed on the number of public disclosure requests received by agency staff for the F-1's in recent years, along with changes in technology that have made it easier for requestors to then post them online. The Commission had also received stakeholder feedback at the time and chose to postpone a final decision until after the session in order to give legislators an opportunity to address the issue if they wished, and asked staff to develop a further stakeholder outreach plan for the Commission's consideration at the March meeting.

Staff recommended that the outreach effort after the current legislative session be conducted via survey, incorporate any changes to reporting requirements resulting from the agency-request bill as well as other changes the agency is working on for the F-1 filing application. Staff would survey filers and other stakeholders in May, report back to the Commission in June with stakeholder results regarding online publication, and conduct further discussion about the F-1 application development as that work continues.

**MOTION 19-014** Moved by Commissioner Ammons, seconded by Commissioner Lehman that:

**Staff move forward with the proposed schedule and approach for soliciting stakeholder input around the F-1, and defer final action until the conclusion of that process.**

The motion passed 4-0.

*Next Steps/Follow-up:* Staff will have a discussion with the Commission at the April meeting about survey contents, with a planned launch in May, then return to the Commission with survey results and a broader conversation about publication and F-1 improvements in June.

**Rules and Interpretation | [PDC Meeting Video](#)**

General Counsel Sean Flynn presented proposed draft amendments to permanent rules for implementation of the new DISCLOSE Act, [SSB 5991](#). General Counsel Flynn highlighted public comments received and taken into consideration in the new drafts. Changes to be considered in

[WAC 390-05-521](#) & [WAC 390-05-535](#) include further definition of payments, expressly excluding payments where organizations have received funding legally bound and explicitly prohibited from campaign use.

The updated draft of [WAC 390-16-013](#) explains reporting requirements and thresholds. Incorporated in the new draft are suggestions from the public to clarify the registration thresholds regarding contributions made to a sponsored committee or out-of-state committee, the reporting of aggregated contributions received, and the inclusion of fair market appreciation.

The Commission and staff discussed the amendments to be made to both drafts and submission to the code reviser for rules to be effective April 29, 2019.

**MOTION 19-015** Moved by Commissioner Downing, seconded by Commissioner Lehman that:

**The Commission adopt the proposed rule as further modified by the discussion to amend [WAC 390-05-521](#) by including “fair market” ahead of “appreciation” and the inclusion of “such as” after “incidental committee” in subsection (b), as well as the deletion of subsection 8 in [WAC 390-16-013A](#).**

The motion passed 4-0.

**MOTION 19-016** Moved by Commissioner Ammons, seconded by Commissioner Downing that:

**The Commission adopt permanent rules for chapter 111, laws 2018, SSB 5991 at [WAC 390-16-013](#), [WAC 390-05-521](#), and [WAC 390-05-535](#) as amended.**

The motion passed 4-0.

*Next Steps/Follow-up:* Staff to submit to Code Reviser and rules to go into effect April 29, 2019.

#### **Legislative Update | [PDC Meeting Video](#)**

Deputy Director Barbara Sandahl presented the Commission with updates on pending legislation and potential impacts on the agency regarding port district campaign contributions ([HB 1375](#)), PAC-to-PAC contributions ([ESHB 1379](#)), lobbyist attestation to sexual harassment training ([SSB 5861](#)), the presidential primary ([ESB 5273](#)), and campaign treasurer training ([SSB 5388](#)). The Commission and staff discussed the potential training to be provided for both lobbyists and treasurers, as well as the PDC's enforcement role when those filers fail to attest that they have completed training. Staff will continue to monitor for changes that may impact the agency, provide insight as necessary, and add [ESHB 1379](#) and [SSB 5388](#) to the master calendar for potential rulemaking.

General Counsel Flynn gave a brief update on the current agency request bill [SHB 1195](#), which was scheduled for executive session in the Senate State Government Committee, March 29, 2019. He reviewed technical changes staff identified, as well as other cleanup items. General Counsel Flynn elaborated on the discussions held about the Commissioners' ability to engage in “lobbying” (working on issues that may involve legislative action) activities outside Washington

state and the jurisdiction of the PDC, regarding how it would work, who would determine potential conflicts of interest, and whether and how that potential activity would be disclosed. Chair Levinson explained that lobbying is defined in 42.17A.005 as attempting to influence the passage or defeat of any legislation *by the Washington legislature*, or the adoption or rejection of any rules, etc. *by a State agency*. That definition is what underlies the guidance the agency provides to the regulated community. So one of the goals in the PDC request bill was to eliminate the language that says that lobbying by Commissioners is prohibited “whether in or out of state” since lobbying expressly defined as involving the Washington Legislature and agencies, not other states or the federal government. Commissioner Lehman expressed concern that this amendment and the amendment allowing Commissioners to participate in campaign activities that do not otherwise conflict with their authority and responsibilities were still unaddressed. He asked that Chair Levinson communicate with the Legislature that if still possible, these be included in the bill as it moves forward. Commissioner Ammons concurred.

*Next Steps/Follow-up:* Staff to add ESHB 1379 & SSB 5388 to the master calendar for potential rulemaking at the conclusion of the session.

*Next Steps/Follow-up:* Chair Levinson to communicate with Senate Committee Chair and Vice-Chair on a proposed amendment for Sec 6(3) to SHB 1195.

#### **Budget Discussion | [PDC Meeting Video](#)**

DES Budget Analyst Chad Johnson reported on the Transparency Account in [42.17A.785](#), which is dedicated for implementation of the campaign finance law and which may not be used to supplant other agency funds, and its current balance of \$745,061.

Funding for the reimbursement of third-party attorney fees, as requested in the PDC’s decision package, and agency I.T. needs such as the F-1 confidential information review, website usability study, and website improvements were funded in the House budget, which would leave a balance of \$219,061 in the Transparency Account. Executive Director Lavalley noted that while the account is subject to specific appropriations, staff are continuing discussions with OFM, legislators, and legislative staff about ways to move forward with the Commission’s direction to enable authorization of funds as they become available for pre-approved priority projects in the queue.

#### **Management Team Updates | [PDC Meeting Video](#)**

##### Communications, Outreach and Filer Assistance update

Communications and Outreach Director Kim Bradford presented changes made to the C-1ic and the C-8 forms, made in response to comments received from the non-profit community. Staff also discussed suggestions received from Chair Levinson, which will be reviewed for incorporation into the final forms that will be posted online within a few days.

Director Bradford discussed work the Customer Service team has done handling F-1 questions, as well as reminders being sent to both F-1 and T-1 filers who had not yet fulfilled their requirements. She highlighted the additional outreach communications regarding [HB 2938](#) to notify odd-year candidates, as well as preparing to communicate any legislative changes that may emerge from the 2019 session.

*Next Steps/Follow-up:* Staff to make changes to incidental committee instructions and forms and post final versions on PDC website.

#### Process Improvement Spotlight

Filer tips are now posted on the PDC website and updated approximately weekly. Director Bradford summarized the effort to capture answers developed in response to questions so that other filers can benefit from the information, as well as streamline and standardize the customer service team's answers to future inquiries. The staff would like to segregate the filer tips by audience in the future so filers can find information more easily.

#### IT Activity Report

Chief Information Officer James Gutholm discussed the final piece of the case-tracking project, the benefits it will provide, staff training and the integration of a penalty-management system that would allow staff to better communicate with DES for invoicing purposes.

CIO Gutholm talked about the progress of the C-1 registration project that will finish in May and the F-1 project that staff would then devote time to for completion in January 2020. From there, staff will begin work on the campaign finance software (ORCA) replacement project, which is anticipated to run for 18 months. Other potential projects could move forward with funding from the 22W Transparency Account that will allow for updates and improvements to the website.

#### Executive Director

Executive Director Peter Lavalley reiterated some highlights discussed earlier in the meeting such as the budget process success to date, legislative success with not only the PDC's bill but others that affect the agency, improvement in compliance numbers, and tools rolling out both internally and externally. This is an exciting time for the agency.

#### **Reporting Modification Requests | [PDC Meeting Video](#)**

The Commission conducted a hearing as part of the regular meeting to hear requests for reporting modifications. Jennifer Hansen, Compliance Officer, presented the requests. All applicants waived their right to participate at the hearing.

Commission Chair Levinson stated that she has previously worked with Judge Andrea Chin but that it would not keep her from being fair and objective in this matter.

The following individuals requested a new or a renewal of a reporting modification:

#### **NEW**

- [Andrea Chin](#)—Judge, Seattle Municipal Court, requested a reporting modification that would exempt her from reporting real estate, including street address, parcel number, or legal description, for her residential address on her Personal Financial Affairs Statement covering calendar year 2018. Judge Chin is also requested a retroactive modification that would exempt her from reporting real estate, including street address, parcel number, or legal description, for her residential address on her F-1 report covering September 2016 to September 2017, filed as a candidate in the 2018 election.

- [Faye Chess](#)—Judge, Seattle Municipal Court, requested a reporting modification that would exempt her from reporting real estate, including street address, parcel number, or legal description, for her residential address on her Personal Financial Affairs Statement covering calendar year 2018. Judge Chess is also requested a retroactive modification that would exempt her from reporting real estate, including street address, parcel number, or legal description, for her residential address on her F-1 report filed as a newly appointed municipal court judge covering April 2017 to April 2018.
- [Lee Grochmal](#)—Superior Court Judge, Whatcom County Superior Court, requested a reporting modification that would exempt her from reporting real estate, including street address, parcel number, or legal description, for her residential address on her Personal Financial Affairs Statement covering calendar year 2018.

**MOTION 19-017** Moved by Commissioner Ammons, seconded by Commissioner Downing that:

**The Commission grant the partial reporting modifications as requested by Judge Chin, Judge Chess, and Judge Grohman for each reporting period as submitted, finding that literal application of the law 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 4-0.

#### **RENEWALS**

- [William Ayer](#)—Regent, University of Washington, requested a renewal of a reporting modification that would exempt him from disclosing the business customers that paid \$12,000 or more during the reporting period to VICIS, Inc. where he serves as a Board Member.
- [Raymond F. Clary](#)—Superior Court Judge, Spokane Superior Court, requested a renewal of the reporting modification that would exempt him from disclosing his personal residential address information, including street address, parcel number, or legal description, on his Personal Financial Affairs Statement covering calendar year 2018.
- [Drew Hansen](#)—State Representative, 23<sup>rd</sup> Legislative District, requested a renewal of a reporting modification that would exempt him from disclosing the business customers that paid \$12,000 or more during 2018 to Susman Godfrey LLP, a law firm.
- [Benson Wong](#)—City Council Member, City of Mercer Island, requested a renewal of a reporting modification that would exempt him from disclosing the business customers that paid \$12,000 or more during 2018 to Keller Rohrback LLP, a law firm.

**MOTION 19-018** Moved by Commissioner Downing, seconded by Commissioner Lehman that:

**The Commission grant the partial reporting modifications as requested by William Ayer, Superior Court Judge Clary, Representative Hansen, and Councilmember Wong for each reporting period, finding that literal application of the law 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 4-0.

### **Executive Session**

The Commission went in to Executive Session at 11:54 a.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. Any action regarding pending litigation, or other matters properly discussed during executive session, would be taken following the Executive Session.

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

### **Enforcement and Compliance Update | [PDC Meeting Video](#)**

Kurt Young, Compliance Officer, reported on the status of PDC cases and case statistics in the period since the last Commission meeting.

- 6 cases closed with no evidence of violations
- 26 cases closed with a reminder
- 10 cases closed with a formal written letter
- 1 case closed as a request for technical correction
- 3 cases closed as resolved by citizen action
- 2 cases resolved through a statement of understanding
- 2 cases closed with Commission finding violations

Deputy Director Sandahl reported that there are 195 pre-HB 2938 cases open and 50 post-HB 2938 cases open.

Compliance team has closed 898 cases over the last year, averaging more than 50 case closures per month.

### **Enforcement—Proposed Stipulations | [PDC Meeting Video](#)**

Sean Flynn, General Counsel, presented proposed Stipulations as to Facts, Violations and Penalty for the Commission's consideration and possible approval.

Dan Brady, Counsel for the Respondent in both matters, and Jeff Harvey, President of Enterprise Washington, appeared in-person.

- [North Cascade Jobs Enterprise Washington, PDC Case 42387](#), involving alleged violations of: (1) [RCW 42.17A.305](#) by failing to timely file reports of electioneering communications (PDC Form C-6), totaling \$182,323, filed between 88-114 days late; and [RCW 42.17A.240](#) (PDC Form C-4) by failing to timely report expenditures totaling \$174,763 (\$135,497 monetary expenditures and \$39,266 orders placed/debts), filed between 27-113 days late.

Proposed Stipulation as to Facts, Violations and Penalty:

The Respondent, North Cascade Enterprise Jobs, agreed to pay a total civil penalty of \$80,000 with \$40,000 suspended on the following conditions:

- a) The Committee is not found to have committed any further violations of RCW 42.17A or WAC 390 within four years of the date of the Final Order in this matter. The suspended penalty shall not be assessed based upon any remediable violation, minor violation, or error classified by the PDC as appropriate to address by a technical correction.
- a) The Committee files amended C-4 reports that are in full compliance with the disclosure requirements of RCW 42.17A.240, WAC 390-16-037, and WAC 390-16-205, within thirty days from the date of the Final Order and is compliant with all reporting requirements.
- b) The non-suspended portion of the penalty (\$40,000) is paid by the Committee within 30 days of the date of the Final Order in this matter.

The Committee affirms its intention to comply in good faith with the provisions of RCW 42.17A and WAC 390 in the future.

PDC staff recommended approval of the proposed Stipulation as to Facts, Violation and Penalty as presented.

- [Citizens for Progress Enterprise Washington, PDC Case 39159](#), involving alleged violations of: (1) [RCW 42.17A.305](#) by failing to timely file C-6 reports of electioneering communications (PDC Form C-6), totaling \$65,689, filed between 39 and 71 days late and 34 to 50 days after the 2018 primary election; and (2) [RCW 42.17A.240](#) (PDC Form C-4) during the 2018 primary and general elections by failing to properly describe expenditures in accordance with [WAC 390-16-037](#) and [WAC 390-16-205](#), totaling \$408,047.

Proposed Stipulation as to Facts, Violations and Penalty:

Respondent Citizens for Progress Enterprise Washington agreed to pay a total civil penalty of \$21,000 with \$10,500 suspended on the following conditions:

- b) Respondent Citizens for Progress Enterprise Washington is not found to have committed any further violations of RCW 42.17A or WAC 390 within four years of the date of the Final Order in this matter. The suspended penalty shall not be assessed based upon any remediable violation, minor violation, or error classified by the PDC as appropriate to address by a technical correction.
- c) The Committee files amended C-4 reports that are in full compliance with the disclosure requirements of RCW 42.17A.240, WAC 390-16-037, and WAC 390-16-205, within thirty days from the date of the Final Order and is compliant with all reporting requirements.
- d) Respondent Citizens for Progress Enterprise Washington pays the non-suspended portion of the penalty (\$10,500) within thirty days from the date of the Final Order.



PDC staff recommended approval of the proposed Stipulation as to Facts, Violation and Penalty as presented.

The Commission asked a number of questions of Staff and Counsel regarding the two cases.

The Commission went into closed session to discuss the Proposed Stipulations at 1:51 p.m. and returned to open meeting at 1:57 p.m.

In the matter of PDC Case 39159, the Commission asked if both parties would agree to amend the Stipulation as to Facts, Violation and Penalty, requiring that the non-suspended portion to be paid within 30 days rather than 90 days from the date of the Final Order. The parties concurred with the amendment and executed an Amended Stipulation.

**MOTION 19-019** Moved by Commissioner Ammons, seconded by Commissioner Downing that:

**The Commission accepts the Stipulation as to Facts, Violations and Penalty as proposed for PDC Case 42837, North Cascade Jobs Enterprise Washington.**

The motion passed 4-0.

**MOTION 19-020** Moved by Commissioner Ammons, seconded by Commissioner Lehman that:

**The Commission accepts the proposed Stipulation as to Facts, Violations and Penalty as amended in PDC Case 39159, Citizens for Progress Enterprise Washington.**

The motion passed 4-0.

*Next Steps/Follow-up:* Orders will be issued within 10 business days.

**Request for Electronic Reporting Hardship Exemption | [PDC Meeting Video](#)**

Jennifer Hansen, Compliance Officer, presented the Voters Want More Choices (VWMC) request for an electronic reporting hardship exemption. Tim Eyman was to appear on behalf of Voters Want More Choices, but was not present at the hearing.

Mr. Eyman was notified and aware of the meeting date and time on the agenda. He contacted PDC staff to notify the agency that he would not be able to attend at the time scheduled.

The Commission heard the matter.

Chair Levinson noted that Mr. Eyman made a request for a reporting modification during the February 28, 2019 public comment portion of the Commission meeting. At that time, Mr. Eyman was informed that request for reporting modifications under [RCW 42.17A.120](#) is a different part of the statute than the electronic filing exemption under [RCW 42.17A.245](#). The Commission asked Mr. Eyman to work with the PDC Executive Director on his request.

Ms. Hansen reported that Mr. Eyman stated VWMC has had changes in committee officers, including its treasurer, and that these personnel changes have made the submittal of amended

reports electronically difficult. Mr. Eyman stated that the previous VWMC treasurer no longer has ORCA available on her computer, and the 2019 VWMC treasurer does not have the 2017 ORCA data and is experiencing health issues.

Mr. Eyman requested to file amended reports on paper rather than electronically.

Executive Director Lavallee discussed his review of the matter. The PDC made available on the PDC website the updated files that Mr. Eyman was proffering so that the public would have the benefit of seeing this information. However, it was made clear to Mr. Eyman that the posting does not mean that the information was accepted as filed correctly.

Director Lavallee, after review of the matter with staff and receiving Mr. Eyman's input, reached the conclusion that there is not statutory authority to grant an electronic hardship exemption for a political committee under RCW 42.17A.245, which is limited to candidates, and that modifications allowed pursuant to RCW 42.17A.245 are for content, not filing method.

**MOTION 19-021** Moved by Commissioner Ammons, seconded by Commissioner Lehman that:

**The Commission reject the request for electronic filing hardship exemption under [RCW 42.17A.245](#).**

The motion passed 4-0.

Meeting adjourned at 2:45 p.m.

Approve April 25, 2019.

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### Summary of Next Steps/Action Items

- Staff will have a discussion with the Commission in April about survey contents, with a planned launch in May, then return to the Commission with survey results and a broader conversation about F-1 improvements in June.
- Staff will submit to the Code Reviser the rules for SSB 5991 to go into effect April 29, 2019.
- Staff will add SHB 1379 & SSB 5388 to the master calendar for potential rulemaking when the session is concluded.
- Chair Levinson will communicate with Senate Committee leadership on the possible amendment for SHB 1195 Sec. 6(3).
- Staff will make changes to incidental committee instructions and forms and post final versions on the PDC website.
- Orders will be issued for the enforcement matters within 10 business days.