



**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.

**December 3, 2015**

**COMMISSION MEMBERS PRESENT**

Katrina Asay, Chair  
Anne Levinson, Vice Chair  
John Bridges, Member  
Amit Ranade, Member

**STAFF PRESENT**

Evelyn Fielding Lopez, Executive Director  
Lori Anderson, Communication and Training Officer  
Phil Stutzman, Sr. Compliance Officer  
Linda Dalton, Sr. Assistant Attorney General  
Jana Greer, Executive Assistant  
Toni Lince, Customer Service Specialist

**COMMISSION MEMBER NOT PRESENT**

Grant Degginger, Member

The regular meeting of the Public Disclosure Commission was called to order by Commission Chair Asay at 9:35 a.m. in the Evergreen Plaza Building, Room 206 Olympia, Washington.

**Opening Comments**

Commissioner Asay called the meeting to order at 9:35 a.m.

**Citizens Comments/Concerns**

No comments or concerns were expressed.

**Commissioner Comments/Concerns**

No comments or concerns were expressed.

**Minutes**

October 5, 2015 Special Meeting

Commissioner Levinson and Commissioner Bridges were not in attendance at the October 05, 2015 special meeting and therefore could not vote on approval of minutes.

The October 05, 2015 special commission meeting minutes will be presented at the next commission meeting.

October 22, 2015 Regular Meeting

**Motion 15-118**

Moved by Commissioner Ranade, seconded by Commissioner Bridges that:

**The Commission adopt the meeting minutes of October 22, 2015 regular meeting.**

The motion passed unanimously.

**Rule Making**

Public Hearing and Possible Adoption of:

Commissioner Asay opened the public hearing. No one from the public signed up to participate at the hearing.

**Proposed New Rules**

Lori Anderson provided an overview of the proposed new rules for alternative responses to non-compliance, and

- WAC 390-37-061 Alternative responses to non-compliance – Goals and objectives – Factors to be considered
- WAC 390-37-075 Deferred enforcement - Process

### **Proposed Amended Rules**

- WAC 390-37-010 Enforcement procedures - General
- WAC 390-37-030 Enforcement procedures - Citizen complaints filed with the commission
- WAC 390-37-050 Enforcement procedures - Respondent's notice of complaint
- WAC 390-37-060 Enforcement procedures - Investigation of complaints - Initiation of hearing (adjudicative proceeding)
- WAC 390-37-070 Enforcement procedures - Complaints dismissed by executive director
- WAC 390-37-090 Informal settlement - Cases resolvable by stipulation prior to an enforcement hearing (adjudicative proceeding), or by other alternative dispute mechanisms
- WAC 390-37-103 Commission options following receipt of a staff report on alleged violations
- WAC 390-37-140 Brief enforcement hearings (adjudicative proceedings) - Authority
- WAC 390-37-142 Brief enforcement hearing (adjudicative proceeding) - Procedure
- WAC 390-37-155 Electronic filing brief enforcement hearing penalty schedule
- WAC 39-37-160 Statement of

amended rules establishing additional remedies and processes. These rules are intended to provide more options for handling complaints and adjudicative procedures; increasing efficiency.

She noted that a stakeholder meeting, and a prior hearing was held where testimony was given as well as questions asked which resulted in the drafting and the development of the proposed new rules. Ms. Anderson reviewed the proposed changes in each rule and discussed needed housekeeping changes.

Staff requested that the Commission adopt the proposed changes and amended rules as well as adopt the proposed new rules as presented. Adopted rules would take effect at the end of January 2016.

Linda Dalton noted that WAC 390-37-061 does have the definition of minor and technical violation that the Commission had asked to be included.

financial affairs (F-1) penalty schedule

- WAC 390-37-165 Candidate registration statement (C-1) | Candidate statement of financial affairs (F-1) penalty schedule
- WAC 390-37-170 Lobbyist monthly expense report (L-2) penalty schedule
- WAC 390-37-175 Lobbyist employer report (L-3) penalty schedule
- WAC 390-37-182 Penalty factors
- WAC 390-32-030 Complaint Publication - Fair campaign practices code - Alternative to investigation or adjudicative proceeding

**Motion 15-119**

Moved by Commissioner Ranade, seconded by Commissioner Levinson that:

**The Commission adopt the new rules WAC 390-37-061 and WAC 390-37-075 as submitted.**

The motion passed unanimously.

**Motion 15-120**

Moved by Commissioner Ranade, seconded by Commissioner Levinson that:

**The Commission adopt the proposed amended rules WAC 390-37-010, WAC 390-37-030, WAC 390-37-050, WAC 390-37-060, WAC 390-37-070, WAC 390-37-090, WAC 390-37-103, WAC 390-37-140, WAC 390-37-142, WAC 390-37-155, WAC 390-37-160, WAC 390-37-165, WAC 390-37-170, WAC 390-37-175, WAC 390-37-182, and WAC 390-32-030 as submitted.**

The motion passed unanimously.

Commissioner Ranade stated that he was really glad to have these improvements and to be able to have these finished by his last meeting.

Commissioner Levinson thanked staff for all their effort; She stated that staff began this effort in March 2015 to streamline processes, and improve the ability to handle matters more efficiently and more timely. This was a lot of work and the Commission really appreciates getting this done by the end of the year. Ms. Anderson noted that most

of the work was done by Tony Perkins and past Executive Director Andrea McNamara Doyle.

Commissioner Asay also appreciated staff's effort to take stakeholders concerns to heart, and to develop rules that will work for everyone.

### Report To The Commission

- 1) *Whatcom County Officials (Jack Louws, Executive; Bill Elfo, Sheriff; and David McEachran, Prosecutor)*, Case No. 1122 involving alleged violations of RCW 42.17A.555 by producing and disseminating an informational flyer that promoted Proposition 2015-1, a measure on the November 3, 2015 ballot concerning an increase in the sales and use tax to pay for the construction and operation of a new jail facility in Whatcom County.

Phil Stutzman presented staff's findings, conclusions, and recommendations regarding the allegations contained in PDC Case No. 1122, which includes 15 complaints, five of which are identical 45-Day Citizen Action Complaints, filed between October 18 and November 17, 2015 against Whatcom County Officials (Jack Louws, County Executive; Bill Elfo, County Sheriff; and David McEachran, County Prosecutor). He noted that an additional complaint was received on Monday as well as additional information yesterday. Mr. Stutzman noted that 5 of the complaints are 45 day letters that expire around Dec 19.

Mr. Stutzman stated that the additional materials received yesterday contain important information that could possibly lead staff to a different conclusion than that which was presented in the meeting materials.

Mr. Stutzman provided a summary of the new information to the Commission and noted that staff would want to look at the campaign coordination activities. Previously staff had not seen evidence of a coordinated campaign, but now there appears to be activity.

Mr. Stutzman asked the Commission how they would like to proceed.

Commissioner Levinson stated that even before the receipt of new information, she was not convinced that there was not a violation. Given that there are factual issues that suggest some additional issues, she recommended that the PDC keep this matter and set it for hearing.

### **Motion 15-121**

Moved by Commissioner Levinson, seconded by Commissioner Bridges that:

**The Commission reject staff's recommendation of referral to the Attorney General with a finding of no violation, and instead direct the matter be set for a hearing to consider the facts and arguments concerning whether the identified officials violated RCW 42.17A.555 by using public resources to produce and distribute the mailing at issue.**

The motion passed unanimously.

The Commission requested that staff add to the analysis of and follow-up on the following items:

- Normal and regular conduct, still must be permissible conduct.
- Was mailing a neutral mailing or was it advocacy?
- Staff noted there was a contract to do the work, but it's still public money and not an independent political action committee.
- There is an indication that meetings were held in public offices too.
- Disagree that using photos of elected officials and names of elected officials is appropriate.
- Problem that this was sent to registered voters.
- Once on the ballot there is a higher expectation that anything sent by government is neutral.

Commissioner Bridges stated that he had the same concerns, without even considering the new materials. Commissioner Levinson noted that additional staff analysis is warranted and that the Commission has the resources to handle this matter so there is no need to refer to the Attorney General.

### **Public Comment**

Richard Jehn, one of the complainants in PDC case no. 1122, participated via phone and provided public comment:

Mr. Jehn commented that the source of the materials was Whatcom County administration via a public records request. The materials included all emails and the minutes of meetings, this information is sourced from the County. There was a clear intention of attending local group meetings, and even acknowledge that Mr. Louws and Mr. Elfo attended the meetings; presumably to share information. Mr. Jehn pointed out that there are numerous emails discussing the mailer and campaign.

There are key outstanding questions regarding additional meetings listed on the calendar. Mr. Jehn submitted a records request for additional meeting minutes that are identified on the calendar, he noted that the County responded to his request stating they do not have meeting minutes.

Mr. Jehn encouraged the Commission to consider that notes were probably taken, but maybe were left at DLR group. Also, there is a reference to mailer #1; he could not

find evidence of a mailer, but believes that there was a separate newsletter sent out to residents of the county. The glossy mailer is referenced as #2 in the calendar.

Mr. Jehn stated that he appreciated that the Commission wishes to pursue this further.

Commissioner Levinson asked PDC staff to clarify what was requested from Whatcom County officials?

Phil Stutzman stated that staff sent the 15 complaints and asked for a response. He noted that Royce Buckingham of the Prosecutors Office provided a response, as well as follow up. Staff asked for additional information, and then followed up, but did not ask for all documents that would be relevant, this was due to the timeframe allowed.

### **Staff Reports**

Executive Director

Evelyn Fielding Lopez reviewed the PDC project tracking sheet which showed the status and progress of items the Commission has asked staff to follow-up on.

Ms. Fielding Lopez stated that she had individual introductory meetings with Representative Holy, Representative Bergquist, Representative Van Werven, Representative Sam Hunt, Senator Billig, and Senator Roach. All of the meetings were positive and some of the legislators will consider sponsoring PDC agency request legislation for 2016.

Senator Billig is interested in sponsoring PDC agency request bill related to out-of-state political committees being held to the same rules and standards as the in-state political committees. His interest is that this is an aspect of his bill regarding election reform.

Ms. Lopez asked the Commission to consider how, and if, they would like to make formal statements on a bill that is before the legislature.

Commissioner Levinson asked the Commission to think about, as they discuss the PDC legislative agenda, not only the agency request bills but other bills that are relevant to PDC business, having a more comprehensive approach to what the Commission may support or stay neutral on. This would allow the Commission to be better informed earlier in the legislative process.

Commissioner Ranade stated that historically the Commission has weighed in on matters that deal with process and that which have an impact on the PDC process. The Commission has steered clear of substantive

and jurisdictional matters. The Commission should focus on how the PDC does its “job” and the need for resources.

Commissioner Bridges agreed with Commissioner Ranade’s statement.

Ms. Lopez stated that once a proposal has been submitted to her she would then send it to the Commissioners for review. If a Commissioner has concerns they can let her know if this is something the full Commission would like to weigh in on.

Commissioner Levinson asked that before the proposal is sent to the Commission that staff and counsel also review and provide input.

Commissioner Asay stated that it is important for the Commission to weigh-in on legislation that affects how the PDC operates, and that could cause conflict within the rules or PDC staff doing their job. She noted that the Commission should steer clear of “signing-onto” any one bill. This could have the potential of creating the impression that the PDC is in support, but the bill can then change by the time it is actually passed.

Ms. Lopez discussed the process for reviewing orders after hearings. She asked for the Commission’s preference of involvement for viewing orders. Ms. Fielding Lopez provided examples of recent orders from the October meeting and how they were reviewed and processed.

Commissioner Levinson stated that when there is a matter where the Commission takes a different position than staff, or are creating a record that is material, that it then comes back to the Commission for review. The more pro forma orders are not something that need to be sent to the Commission.

Linda Dalton stated that historically counsel to the Commission, when the position was in house, had participated in drafting all of the orders. The current rules authorize the director to sign orders on the Commission’s behalf.

Ms. Dalton cautioned the Commission that if the process is going to be more of an editing/feedback then the Commission should approve those orders at a meeting.

Commissioner Bridges suggested that the Commission determine if review is needed on a case by case basis.

Commissioner Asay suggested to send the draft to the Commissioner that made the motion.

Commissioner Levinson stated that the obligation is on the Commission to identify a need for review. She urged the Commission not to create extra process.

Ms. Lopez discussed her recent contact with the City of Seattle and their experience with, and the potential for, having recount votes.

Candidates have asked if campaign monies can be used for expenses related to the recount. Staff has researched to see what the PDC had discussed to date. In 2012 PDC Commission was asked the question, "Could a candidate use their campaign money, or would this be considered a personal use of campaign money?" the Commission did not make a statement. She asked if this is something the Commission would like a briefing on, and an opportunity to revisit.

Commissioner Ranade stated that he believed the Commission did not pursue this because it was beyond the Commission's authority.

Commissioner Levinson discussed chartering a course to coordinate with local commissions so that elected officials do not have conflicting interpretations and rules; an opportunity to work in tandem.

Ms. Fielding Lopez noted that it would be a real benefit to the public for the Commission to provide some clarity on this topic. She will have staff prepare information for a more studied look and discussion by the Commission at a future meeting.

Customer Service

Toni Lince reported on the PDC 2015 combined fund drive activities and its success.

Lori Anderson stated that the PDC annual report was finalized and distributed at the end of November.

Ms. Anderson provided a status update on the PDC website development and its continued progress. Staff are doing 2 week sprints with contractor, and sub-contractor is in daily contact. The first concentration was on user stories based on analytics from users; also internal stakeholder interviews have begun, and staff will then move into external stakeholder interviews. She noted that there is a large group of interested stakeholders that have volunteered to assist.

Ms. Anderson stated that website team is working at a very fast pace and are on track to go live in March 2016. Currently she is doing a huge merge on our content audit to start on external work. There will be mock-ups of the



website for review and these will be shared with Commissioners sometime in December, or early January 2016.

Commissioner Asay thanked Ms. Anderson for representing the PDC at a meeting with her in Poulsbo for Kitsap League of Women Voters.

Compliance and Enforcement

Susan Harris provided a status update of investigations that are open, some are scheduled for completion/hearing into 2016.

The goal is for staff to schedule hearings at least 2 months out so that charges can be issued and ample time is allowed to prepare the case.

**2016 Commission Meeting Schedule**

Dates for the 2016 regular meetings were reviewed and finalized.

Once approved, Lori Anderson will submit to the Washington State Code Revisor.

**Motion 15-122**

Moved by Commissioner Ranade, seconded by Commissioner Levinson that:

**The Commission adopt the 2016 regular meeting schedule as presented.**

The motion passed unanimously.

**Farewell to Commissioner Ranade**

Commissioner Asay presented Governor Jay Inslee's letter of appreciation thanking Commissioner Ranade for his service.

Commissioner Ranade thanked the Commission and PDC staff.

**Executive Session**

The Commission went into Executive Session at 11:16 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, and review of performance of public employees.

**Adjourn**

The meeting adjourned at 11:40 a.m.

**Approved**

January 28, 2016