



State of Washington
PUBLIC DISCLOSURE COMMISSION

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Memo

To: Commissioners
From: Sean Flynn, General Counsel
Date: May 16, 2024
Re: APA Rulemaking Petition re Warning Letters

The petitioner, Conner Edwards, submitted a rulemaking petition on April 1, 2024. The petition requests the Commission to adopt a rule that would condition the executive director's delegated authority to resolve a complaint by issuing a formal warning upon concurrence by the Commission Chair, or their designee.

Under the Administrative Procedure Act (APA), a person may petition an agency requesting the adoption, repeal, or amendment of a rule. Within 60 days of the submission of a petition, the agency must either deny the petition, or initiate the rulemaking process. If the Commission denies the petition, it must state its reasons for the denial, addressing the concerns raised and alternative means of addressing the concerns, where appropriate.

This petition is the latest in a series of petitions filed by the petitioner in attempt to influence the policy decisions of the agency, particularly regarding the administration of enforcement matters. The Commission has denied prior petitions seeking to change agency enforcement policies by explaining that "[t]he appropriate place to discuss policy and enforcement matters, the tradeoffs between alternative approaches, as well as the use of the agency's limited resources, is within the agency's strategic planning process." Indeed, the Commission has addressed issues regarding the enforcement processes in detail this year, which has included consideration of resolving cases through formal warnings.

The concerns raised in the petition are already addressed in existing agency procedures. The Commission regularly requests staff to present a summary of case resolutions to the Commission each month, which is offered specifically to provide the Commission with the ongoing opportunity to assess agency decision-making, give feedback, and offer guidance as to the administration case complaints, including the use of formal warnings. As such, the Commission is continuously advised as to case management practices and may question or advise staff on such matters at any time. Staff does not believe it necessary to create additional processes to each warning issued in individual cases. For these reasons, staff recommends the Commission deny the petition.