

APA Petition to Require Filer Training

Relevant Quotes from March '24 Strategic Planning Meeting

“The way that I read it is, we have a problem getting all of the work done in enforcement that we want to do. And I think we need to be thinking about changing the way we think about enforcement and thinking about it in a more proactive way and moving away from the way that we use complaints as the basis for enforcement. And I don’t have the solution for that, but I think that’s the strategic question. And that gets at what Conner is talking about. Conner is talking about some, you know, symptoms of the problem. He’s not getting at what the underlying root cause of the problem is and how we deal with the root cause. And I think that’s the challenge we need to take up as a strategic item.”

-Former Commissioner Fred Jarrett
March '24 Strategic Planning Meeting @ 0:04:17 to 0:05:07

“Because ultimately, we’re talking about enforcement, but I think that every person in this room would rather have people comply ahead of time, right? We don’t want to get to the point of ‘you didn’t file’, we want to get to the ‘you should file’”

-Chief Information Technology Officer James Gutholm
March '24 Strategic Planning Meeting @ 0:25:54 to 0:26:06

“[discussing proposed messages to send to filers at the beginning of a campaign] ...If you’re going to play the game in Washington State and run for office, know that there are certain burdens that come and obligations that come and there are financial consequences for failure to comply with this...”

-Commissioner Allen Hayward
March '24 Strategic Planning Meeting @ 0:30:42 to 0:30:55

“... I often make a point when I am speaking to groups or things or when I hold initial hearings, I acknowledge that it is not easy to comply with everything. It’s all well-intentioned, the laws and the rules evolved over the years because people have played, found the loopholes, and played fast and loose and I really think we all collectively try to not be in the business of discouraging people from participating in the process...”

-Executive Director Peter Lavalley
March '24 Strategic Planning Meeting @ 0:31:35 to 0:32:01

APA Petition to Require Filer Training Answers to Anticipated Questions

What would your petition accomplish?

The petition would accomplish two things.

First, this petition would require candidate committee and political committee treasurers to either attend the PDC's compliance training course or watch the PDC's compliance training video. This should significantly reduce instances of noncompliance during the campaign by filers who are otherwise unfamiliar with PDC's reporting requirements. This, in turn, should significantly reduce the number of complaints that the agency would have to otherwise process.

Second, if/when filers commit violations of PDC requirements that were covered as part of the PDC's compliance training, this petition would state that this violation would be considered an aggravating factor. This would prevent respondents from being able to effectively assert that their ignorance of the law is a legitimate defense. As it stands today, ignorance of the law is one of the most popular and successful defenses asserted by PDC complaint respondents. When this defense is asserted, staff will often dismiss the complaint with a warning letter.¹

I am aware of no other regulatory agency or court that accepts ignorance of the law as a valid defense that results in the dismissal of an otherwise valid case.

What motivated you to submit this rulemaking petition?

The PDC enforces one of the most burdensome sets of campaign finance requirements in the country. The candidates that I work with spend a tremendous amount of time, money, and energy trying to comply with these requirements. It is absolutely infuriating for those of us who try to follow the rules to see that the agency largely does nothing to enforce the rules against those who make little to no effort to comply. This petition is a part of a larger effort to try to change that.

At various meetings over the last 10 months, the agency has acknowledged that there is a significant degree of noncompliance in the filing community.

The overarching question at these meetings has been: how can the agency address these problems within existing financial resources and existing statutory authority?

This petition is an attempt to address that question. The vast majority of filer noncompliance is because filers are unfamiliar with their obligations under the law. It is almost never because filers are trying to intentionally hide information from the public.

¹ Unless it relates to late/non-filed F1s and C1s. For some reason, staff have actually done a fairly effective job of enforcing the F1/C1 filing requirements and will typically (but not always) pursue penalties for late filings.

Where can I watch the PDC’s compliance training video that you are proposing filers should be required to watch?

You can watch the PDC’s compliance training video here:

<https://www.youtube.com/watch?v=M8j5S-A1dxw>. The video is only 35 minutes long and I strongly urge you to watch it in its entirety before voting on the rulemaking petition on Thursday. PDC staff have done a great job of summarizing the agency’s most important requirements in this brief training video.

What if filers certify that they have watched the agency’s training video but actually have not?

First, if the agency provides meaningful notice to filers at the beginning of the campaign that they need to learn the core campaign finance requirements, I believe that the vast majority of filers will take the time to get familiar with what they are required to do.

However, I would acknowledge that it would be virtually impossible to verify that an individual filer actually attended the compliance training or watched the compliance video. That is why the second part of the rulemaking petition was included.

If an individual filer violates a requirement that was covered as part of the mandatory compliance training, that violation would be considered an aggravating factor *regardless of whether or not they actually watched the video that they were required to watch*. With this aggravating factor being present, the violation should be considered ineligible for a warning letter dismissal unless there were particularly compelling mitigating factors present. This would further incentivize future filers to watch the required video and abide by the applicable requirements.

What if we like parts of this rulemaking proposal but not the entire proposal?

If you like part of the proposal, then implement that part of the proposal. If you want to tweak the proposal, then tweak the proposal. You are not obligated to accept the drafted language.

However, I hope that you understand the overall thrust of this idea. If you agree with this idea (or any part of it) please follow the steps mandated by the APA to adopt it as a rule and file the required notice with the Washington State Register. Please do not place this idea on the “6-month rulemaking agenda”. The PDC has a nasty habit of using the 6-month rulemaking agenda to perpetually kick certain ideas down the road instead of actually dealing with them. If you agree with all or part of this idea, please take concrete action at Thursday’s meeting to help make it a reality.

What is your response to the staff memo asking the Commissioners to reject this proposal?

In their memo, the agency staff have obscured their actual reasons for opposing this proposal.

Staff oppose this proposal because it would restrict their ability to dismiss meritorious complaints with a warning letter when the respondent asserts that their noncompliance occurred due to not being familiar with the requirement at issue.

For too long, agency staff have used warning letter dismissals to essentially paper over widespread noncompliance in the regulated community. In doing this, staff have relied in large part on the argument that ignorance/inexperience with the law was a legitimate excuse for noncompliance and

therefore a legitimate basis for a warning letter dismissal to be issued (as opposed to an actual penalty).

From staff's perspective, issuing mass warning letter dismissals remains a far easier option than tackling the root causes for why the noncompliance is occurring in the first place. While that approach is obviously easier in the short term, it will only result in the continued perpetuation of the agency's problems.

What will you do if the PDC does not make progress on adopting a more meaningful and proactive approach to enforcement at Thursday's meeting?

If the agency does not make concrete progress at Thursday's meeting towards adopting a more meaningful and proactive approach to enforcement, I will continue to advocate for change by filing a large number of PDC complaints against noncompliant filers.

I believe that these complaints can highlight the PDC's problems in a way that makes it impossible for the agency to continue to ignore them.

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Warning Letter Analysis (7/23/24 to 8/18/24)

During this period, staff resolved 3 cases (2 of which involved merged complaints) with warning letter dismissals. As it stands today, there are ~358 outstanding cases the agency is processing. Of these cases, there are ~28 cases that have been pending for 300 days or longer. There are ~50 cases that have been pending for 200-300 days. There are ~104 cases that have been pending for 100-200 days. The remaining ~176 cases have been pending for 1-100 days. Over 100 complaints I've filed have not yet even been posted to the agency's website and are not included in these statistics.

PDC Case No. 155445 - Renton Firefighters for Yes on Prop 1

Complaint Filed: May 24, 2024

Case Resolved: August 19, 2024

Time to Resolution: 87 days

In this case, the staff investigation found that the political committee "Renton Firefighters for Yes on Prop 1" had failed to timely file a single C3 or C4 report during the 2023 election cycle when the committee was supporting a levy ballot measure.

The required reports were filed only in response to the complaint. The late-filed reports were all between 237 and 360 days late.

The committee responded to the complaint and attributed the severely late filings to the fact that their treasurer "*had previous exposure to the old ORCA reporting system, but was unaware of the new system.*" Since the respondent had received a \$3000 contribution from the firefighter's union, it would have been ineligible for the mini reporting option.

Despite the clear evidence of a violation that materially affected the public’s right to know about the finances of a political committee, agency staff unilaterally dismissed the complaint with a “warning letter”, thereby giving a green light to other committees to commit the same type of violation without fear of being penalized.

PDC Case No. 141821 - Citizens for Lopez Solid Waste Levy PAC

Complaints Filed: August 27, 2023 & June 29, 2024

Case Resolved: August 2, 2024

Time to Resolution: 341 days & 34 days

In this case, the staff investigation found that the political committee “Citizens for Lopez Solid Waste Levy PAC” had failed to timely file several C3 and C4 reports. Some of the C3s and C4s that were filed were not accurate and had to be amended after the deadline. The committee had also failed to include required details for expenditures, including several expenditures for printed items.

This case involved two complaints, one filed on 8/27/23 and one filed on 6/29/24. In response to the first complaint, the respondent’s representative said to the PDC: *“I admit I have failed to adhere to the filing date deadlines much to my own chagrin. I certainly will be paying much closer attention to filing deadlines from now on.”* However, after making this statement, the respondent missed a subsequent C4 deadline, filing a C4 report approximately 5 months after the required deadline.

Despite the clear evidence of a violation that materially affected the public’s right to know about the finances of a political committee, agency staff unilaterally dismissed the complaint with a “warning letter”, thereby giving a green light to other committees to commit the same type of violation without fear of being penalized.

PDC Case No. 155439 / 156109 – Steven Minnich

Complaints Filed: April 26, 2024 & June 18, 2024

Case Resolved: August 2, 2024

Time to Resolution: 98 days & 45 days

In this case, the staff investigation found that the candidate Steven Minnich had: a) failed to timely file his F1, b) failed to timely file his initial C4, c) failed to include his party affiliation on his yard signs, and d) failed to timely include the required expenditure details on pre-election reports.

Despite the clear evidence of violations that materially affected the public’s right to know, agency staff unilaterally dismissed the complaint with a “warning letter”, thereby giving a green light to other candidates to commit the same type of violation without fear of being penalized.



Conner Edwards <cg.edwards53@gmail.com>

This week's news article on the PDC

Conner Edwards <cg.edwards53@gmail.com>

Sat, Aug 17, 2024 at 11:50 AM

To: "Hayward, Allen (PDC Commissioner)" <allen.hayward@pdc.wa.gov>, "Isserlis, Nancy (PDC Commissioner)" <Nancy.isserlis@pdc.wa.gov>, "Leach, J. (PDC Commissioner)" <j.leach@pdc.wa.gov>, "North, Douglass (PDC Commissioner)" <douglass.North@pdc.wa.gov>, james.oswald@pdc.wa.gov
Cc: PDC Support <pdc@pdc.wa.gov>

Commissioners:

At this week's upcoming meeting on Thursday, you will decide the outcome of an APA rulemaking petition that would require filers to watch a mandatory 35-minute filer training video at the beginning of a campaign. This petition would also make it more difficult for agency staff to use warning letters to dismiss meritorious complaints when the complaint respondent claims to lack knowledge of the requirement at issue.

As it stands today, ignorance of the law is one of the more popular and successful defenses asserted by complaint respondents. I am aware of no other regulatory agency or court that accepts ignorance of the law as a valid defense.

Agency staff will be urging you to reject this rulemaking petition. At Thursday's meeting, I expect that staff will try to assert that they do not recognize ignorance of the law as being a valid defense to meritorious complaints.

However, a news article that was published earlier this week shows a clear example of how the PDC staff have been dismissing complaints on the basis of ignorance of the law as a defense. See link: https://www.ncwlife.com/news/pdc-complaint-alleges-wenatchee-school-district-s-response-to-wenatchee-record-mailer-violated-election-laws/article_56198824-59c1-11ef-a25e-af947f5d2d8c.html

Halfway through the article, it mentions a warning letter dismissal that the agency issued against Glenn Dobbs, a former state legislator. Dobbs had paid for and distributed political mailers under the guise of a fake newspaper "Wenatchee Record" and a separate mailer under the guise of "Wenatchee Values Alliance". Both of these mailers failed to include the legally required paid for by statement and Dobbs failed to timely file the required C6 independent expenditure form with the PDC. These mailers caused significant community outrage because of the confusion as to who paid for the mailers and how they aggressively denigrated the incumbent school board members and the school district itself.

PDC staff's investigation confirmed that Dobbs had indeed violated state law, but staff nevertheless dismissed the complaints. Here was their explanation for why they dismissed the complaints:

*"While our investigation found that Mr. Dobbs was the sponsor of two political advertisements and failed to timely file C-6 reports and include sponsor identification information, **he was inexperienced and unfamiliar with the PDC requirements pertaining to independent expenditures and sponsor identification requirements on political advertisement.** Additionally, our investigation also found no prior PDC violations against Mr. Dobbs."* [emphasis added]

See link: <https://pdc-case-tracking.s3.us-gov-west-1.amazonaws.com/6281/144377%20Glenn%20Dobbs%20%28Wenatchee%20Values%20Alliance%29%20Warning%20-%20Respondent.pdf> .

This is only one example of how agency staff recognize ignorance of the law as a valid defense to meritorious PDC complaints.

If you don't believe that ignorance of the law should be a valid defense to meritorious PDC complaints, I would encourage you to vote to approve the APA rulemaking petition at Thursday's meeting.

Best,

Conner Edwards
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