

Title 292 WAC

ETHICS IN PUBLIC SERVICE

Chapters

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Chapter 292-09 WAC

AGENCY PROCEDURAL RULES

WAC

292-09-040	Definitions.
292-09-050	Complaints and investigations.
292-09-060	Determination of reasonable cause.

WAC 292-09-040 Definitions. In these rules:

"Adjudicative proceeding" means a proceeding before the commission in which the person involved is given notice and an opportunity to be heard after a determination of reasonable cause that a violation of chapter 42.52 RCW or rules adopted under it has been or is being committed.

"Administrative law judge" means a person assigned by the office of administrative hearings in accordance with chapter 34.12 RCW and appointed by the commission to hear and take evidence with respect to charges against a state employee of the judicial branch.

"Commission" means the commission on judicial conduct.

"Complainant" means the organization, association, or person who makes a complaint alleging violation of chapter 42.52 RCW or rules adopted under it.

"Complaint" means a written statement on a form provided by the commission alleging facts which may upon investigation lead to a finding of a violation of chapter 42.52 RCW or rules adopted under it.

"Determination" means a written statement finding that there is or that there is not reasonable cause to believe that a violation of chapter 42.52 RCW or rules adopted under it has been or is being committed.

"Employee" means a state employee or state officer (as defined in RCW 42.52.010) of the judicial branch of state government, except "judges" (as defined in RCW 2.64.010 and the Code of Judicial Conduct), or the employee's attorney, as the context suggests.

"Enforcement action" means the imposition of sanctions, which may include one or more of the following:

- A reprimand;
- A recommendation that the employing agency commence disciplinary action against an employee; and/or
- An order for payment of any damages, civil penalties, and/or costs as permitted by chapter 42.52 RCW.

Any order for payment shall also include a reprimand.

"Fact-finder" means the commission or an administrative law judge appointed by the commission.

"Hearing" means a public hearing conducted in an adjudicative proceeding.

"Meeting" means a business meeting of the commission for any purpose other than a public hearing or executive session involving the investigation or consideration of a complaint.

"Member" means a member of the commission and includes alternates acting as members.

"Public member" means a member of the commission who is neither a lawyer nor a judge.

"Reprimand" means an enforcement action of the commission that finds that the conduct of the respondent violates chapter 42.52 RCW or rules adopted under it. A reprimand may include a requirement that the respondent follow a specified corrective course of action. The commission shall issue a written reprimand and may require the respondent to appear personally before the commission for a public reading of the reprimand. The commission shall provide a copy of the reprimand to the respondent's employing agency.

"Respondent" means a state employee of the judicial branch who is the subject of a complaint, or the employee's attorney, as the context suggests.

"Staff" means the employees, or others under personal service contract or agreement, engaged to perform commission duties and to exercise commission powers.

[Statutory Authority: Article IV, section 31 of the state Constitution, RCW 42.52.370, and chapter 2.64 RCW. 02-01-041 (Order 01-01), § 292-09-040, filed 12/11/01, effective 1/15/02. Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-040, filed 2/8/95, effective 3/11/95.]

WAC 292-09-050 Complaints and investigations. (1)

Any organization, association, or person, including a member of the commission, may make a complaint to the commission alleging violation of chapter 42.52 RCW or rules adopted under it. A complaint shall be made in writing on a form provided by the commission. A complaint may be made personally or by the complainant's attorney.

(2) Upon receipt of a complaint, the commission staff shall investigate and evaluate the allegations. The investigation shall be limited to the facts alleged in the complaint. On every complaint received, the commission staff shall make a written recommendation that there is or that there is not reasonable cause to believe that a violation of chapter 42.52 RCW or rules adopted under it has been or is being committed. The commission shall make a written determination whether there is reasonable cause based upon the complaint and the recommendation. A copy of the determination shall be provided to the complainant and to the respondent. If the determination concludes that there is no reasonable cause, a copy shall also be provided to the attorney general.

(3) Complaints pursuant to RCW 42.52.450 shall be investigated by the attorney general. As appropriate, pursuant to RCW 42.52.470, the commission may refer a complaint to the employing agency, the attorney general, or the prosecutor.

[Statutory Authority: Article IV, section 31 of the state Constitution, RCW 42.52.370, and chapter 2.64 RCW. 02-01-041 (Order 01-01), § 292-09-050, filed 12/11/01, effective 1/15/02. Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-050, filed 2/8/95, effective 3/11/95.]

WAC 292-09-060 Determination of reasonable cause. If the commission determines that reasonable cause exists that the respondent has violated chapter 42.52 RCW or rules adopted under it, the commission shall schedule a public hearing on the merits of the complaint.

[Statutory Authority: Article IV, section 31 of the state Constitution, RCW 42.52.370, and chapter 2.64 RCW. 02-01-041 (Order 01-01), § 292-09-060, filed 12/11/01, effective 1/15/02. Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-060, filed 2/8/95, effective 3/11/95.]

Chapter 292-100 WAC PROCEDURAL RULES

WAC

292-100-007	Definitions.
292-100-010	Initiation of complaint.
292-100-020	Complaint procedures—Status of complainant and others.
292-100-030	Procedures for filing complaints.
292-100-040	Acceptance and preliminary review of complaints.
292-100-041	Investigation of complaints.
292-100-042	Board staff referral of allegations.
292-100-045	Executive director's dismissal of complaints.
292-100-046	Complainant's request for review of executive director's dismissal order.
292-100-047	Board member's request for review of executive director's dismissal order.
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292-100-060	Notice of hearing—Filing of answer.
292-100-070	Repealed.
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292-100-210	Reconsideration of final orders.
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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

292-100-070	Investigation materials not disclosable during investigation. [Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-070, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-070, filed 10/30/96, effective 11/30/96.] Repealed by 01-13-033, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425.
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WAC 292-100-007 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board staff" shall include the executive director, the investigator, attorneys who bring cases before the board, and the training and information specialist.

(2) "Complainant" means a person who has filed a complaint with the board.

(3) "Employing agency" means the former or current state agency of the respondent during the time the alleged violation occurred.

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(4) "Party" includes the board staff and the respondent. The respondent may be represented in any matter filed under chapter 42.52 RCW by an attorney or an exclusive bargaining representative. If the respondent is represented by a person who is not an attorney, the representation shall conform to the standards of ethical conduct required of attorneys before the courts of the state of Washington.

(5) "Preliminary investigation" refers to the confidential fact-finding investigation that occurs before the board's determination of reasonable cause.

(6) "Presiding officer" refers to the board chair, vice chair, a board member designated as presiding officer by the chair or vice chair, or an administrative law judge.

(7) "Respondent" means a current or former state officer or state employee alleged to have violated chapter 42.52 RCW by a complainant.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-007, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-007, filed 3/2/99, effective 4/2/99.]

WAC 292-100-010 Initiation of complaint. (1) A complaint alleging a violation of chapter 42.52 RCW may be filed by:

- (a) Any person; or
- (b) The board.

(2) If a member of the board or the board's staff files a complaint in his or her individual capacity, the board member or staff member shall be disqualified from acting in his or her official capacity with regard to the disposition of that complaint.

(3) Other agencies may refer information about possible violations of chapter 42.52 RCW to the board for consideration. The board may file a complaint if appropriate.

(4) Complaints initiated by the board will be signed on behalf of the board by the executive director.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-010, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-010, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-010, filed 10/30/96, effective 11/30/96.]

WAC 292-100-020 Complaint procedures—Status of complainant and others. (1) When a complaint has been filed with the board, neither the complainant, if other than board, nor any other person shall have special standing to participate or intervene in the investigation or consideration of the complaint by the board. The complainant is not a party to an ethics case for any purpose; however, the board staff will give notice to the complainant and the employing agency of any open board hearings on the matter.

(2) This section does affect the right to request a review of a board staff decision to dismiss complaint, pursuant to RCW 42.52.425 and WAC 292-100-045.

(3) The person or persons alleged in a complaint to have violated chapter 42.52 RCW, are respondents as to that complaint.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-020, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-020, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-020, filed 10/30/96, effective 11/30/96.]

WAC 292-100-030 Procedures for filing complaints.

(1) A complaint filed with the board shall be in writing on a form provided by the board, or in an appropriate written form that includes the information in subsection (2) of this section, and signed by the complainant or by the complainant's counsel.

(2) A complaint shall include:

(a) The complainant's name; except that the board may choose to issue a complaint based upon information provided by a person who refuses to be identified;

(b) A statement of the nature of the alleged violation(s) and the name of person(s) responsible and the complaint should also include the date, time, and place of each alleged violation; and

(c) All available documentation and other evidence including any witnesses to the violation which the complainant is able to supply to demonstrate a reason for believing that a violation of chapter 42.52 RCW, or the rules adopted under it has occurred.

(3) A complaint which is incomplete, or does not contain enough information to allege a violation of chapter 42.52 RCW, will not be accepted for filing.

(4) The board will not consider allegations in a properly filed complaint that fall outside the jurisdiction of the board. The board or its staff may refer such allegations to an appropriate agency with jurisdiction.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-030, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-030, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-030, filed 10/30/96, effective 11/30/96.]

WAC 292-100-040 Acceptance and preliminary review of complaints. (1) Upon receiving a complaint, the board staff shall review the complaint for completeness. If a complaint is complete, it will be accepted for filing. If a complaint is incomplete, the complaint shall be returned to the complainant with a statement of the reasons the complaint has not been accepted.

(2) Once a complaint has been accepted, board staff will review the complaint, determine the extent of investigation required and determine whether the complaint may be dismissed pursuant to RCW 42.52.425 and WAC 292-100-045.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-040, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-040, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-040, filed 10/30/96, effective 11/30/96.]

WAC 292-100-041 Investigation of complaints. (1) If board staff determines that a complaint should not be dismissed pursuant to RCW 42.52.425 and WAC 292-100-045, the board staff shall conduct a preliminary investigation.

(2) During the course of the preliminary investigation, the board staff will give the respondent(s) a copy of the complaint or a summary thereof, and an opportunity to present such information as the respondent may desire, provided that if a complainant has requested confidentiality under chapter 42.17 RCW, the complainant's name and identifying information shall be deleted from the complaint.

(3) It is the intent of the board that board staff who are investigating a complaint will work with the respondent's employing agency, unless in the judgment of the investigator it will impede the investigation. During the course of the investigation, the board staff shall provide the employing agency with a copy of the complaint or a summary thereof. If a complainant has requested confidentiality under chapter 42.17 RCW, the complainant's name and identifying information shall be deleted from the complaint.

(4) The board staff shall reduce the results of a preliminary review or investigation to writing.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-041, filed 6/13/01, effective 7/14/01.]

WAC 292-100-042 Board staff referral of allegations.

(1) The board staff may refer a complaint or a summary thereof to the employing agency for investigation and recommendation of resolution. The referral will include a copy of the complaint and all supporting documentation and shall include a date for submission of the report and recommendation allowing at least thirty days. If a complainant has requested confidentiality under chapter 42.17 RCW, the complainant's name and identifying information shall be deleted from the complaint. The agency receiving the referral may request additional time, if needed. During the course of the agency's investigation, the agency shall contact the respondent and provide the respondent with a copy of the complaint. The agency will provide the respondent with an opportunity to present such information as the respondent may desire.

(2) If board staff determine that a complaint alleges conduct which may violate a criminal statute, the staff may refer the complaint to the appropriate law enforcement authority and if referred, will suspend their investigation until the law enforcement authority responds as to whether criminal charges will be filed. If the law enforcement authority elects to file criminal charges, no further action will be taken while the criminal case is pending. If the law enforcement authority elects not to file criminal charges, board staff shall complete their investigation and follow the procedures set forth in these rules.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-042, filed 6/13/01, effective 7/14/01.]

WAC 292-100-045 Executive director's dismissal of complaints. (1) If after a preliminary review or investigation the board staff determines that:

(a) Any alleged violation that may have occurred is not within the jurisdiction of the board;

(b) The complaint is obviously unfounded or frivolous;

or

(c) The complaint presents a violation of chapter 42.52 RCW, but any violation that may have occurred does not constitute a material violation because it was inadvertent and minor, or has been cured, and, after consideration of all of the circumstances, further proceedings would not serve the purposes of this chapter, the executive director may dismiss the complaint by issuing an order of dismissal.

(2) The preliminary review or investigation report and a written notice of the executive director's order of dismissal

shall be provided to the complainant, respondent, and the board. (See RCW 42.52.425.)

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-045, filed 6/13/01, effective 7/14/01.]

WAC 292-100-046 Complainant's request for review of executive director's dismissal order. (1) Upon the written request of the complainant, the executive director's order of dismissal will be reviewed by the board.

(2) A request for review must be received at the board's administrative office no later than twenty days after the date the order of dismissal is mailed to the complainant.

(3) A request for review shall state the grounds therefor.

(4) When a request for review is received, the board staff shall prepare a record for the board's review and serve notice upon the respondent that a review has been requested. The record will consist of:

- (a) The complaint;
- (b) The preliminary review or investigation report, as applicable;
- (c) The order of dismissal;
- (d) The complainant's request for review;
- (e) The executive director's response to the request for review; and

(f) Any additional material requested by the chair.

(5) The board shall review the record and deliberate in closed session, without oral argument, and act on the request at the next meeting at which it may be practicable by:

- (a) Affirming the dismissal;
- (b) Directing board staff to conduct further investigation; or

(c) Issuing a determination that there is reasonable cause to believe that a violation has been or is being committed.

(6) In reviewing the executive director's order of dismissal, the board shall base its review on whether the executive director had a rational basis for the decision. The board only shall reverse a decision to the extent that a rational basis is lacking.

(7) The board's decision shall be reduced to writing and provided to the complainant and the respondent.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-046, filed 6/13/01, effective 7/14/01.]

WAC 292-100-047 Board member's request for review of executive director's dismissal order. (1) Upon the written request of a board member, the executive director's order of dismissal will be reviewed by the board.

(2) The preliminary review or investigation report and a written notice of the executive director's order of dismissal shall be provided to the board at the next regular meeting.

(3) A request for review by a board member must be received by the executive director no later than twenty days after the date the order of dismissal is provided to the board.

(4) When a request for review is received, the board staff shall prepare a record for the board's review and serve notice upon the respondent that a review has been requested. The record will consist of:

- (a) The complaint;
- (b) The preliminary review or investigation report, as applicable;

(c) The order of dismissal;

(d) Any additional material requested by the chair or the board member who requested the review.

(5) The board shall review the record, consider the request in executive session, and act on the request at the next meeting at which it may be practicable by:

- (a) Affirming the dismissal;
- (b) Directing board staff to conduct further investigation; or

(c) Issuing a determination that there is reasonable cause to believe that a violation has been or is being committed.

(6) The board's decision shall be reduced to writing and provided to the complainant and the respondent.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-047, filed 6/13/01, effective 7/14/01.]

WAC 292-100-050 Determination on reasonable cause. (1) Following the preliminary investigation, the board staff shall prepare a written investigation report and make a recommendation to the board on whether to find reasonable cause, including a recommendation as to whether the penalty may be greater than \$500.

(2) Upon receipt of the board staff's investigation report and recommendation, the board shall determine whether or not there is reasonable cause to believe that a violation of chapter 42.52 RCW has occurred.

(3) The board's reasonable cause determination shall be done in closed session.

(4) If the board finds reasonable cause, the board shall consider whether the penalty and costs for the alleged violation may be greater than \$500. If the board may wish to impose penalty and costs greater than \$500, the respondent shall be given the option to have an administrative law judge conduct the hearing and rule on procedural and evidentiary matters. If the respondent is not given that option, the board may not impose penalty and costs greater than \$500. The board may, on its own initiative, choose to retain an administrative law judge to conduct any hearing.

(5) Upon receipt of an investigation report and recommendation on a complaint referred to the employing agency for investigation, the board shall either:

(a) Reject the report and recommendation and initiate its own investigation; or

(b) Concur with the report and recommendation and either initiate a hearing if the recommended penalty is a monetary fine or refer the matter to the employing agency for implementation of the recommendation if the recommendation is within the agency's authority to implement. The agency shall report implementation to the board and the board shall dismiss the complaint; or

(c) Concur with the report and recommendation, enter a finding of no reasonable cause and dismiss the complaint; or

(d) Concur with the report and recommendation, consider the report an investigative report, enter a finding of reasonable cause, and proceed under this section.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-050, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b), 99-06-073, § 292-100-050, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b), 96-22-028, § 292-100-050, filed 10/30/96, effective 11/30/96.]

WAC 292-100-060 Notice of hearing—Filing of

answer. (1) Following the board's determination on reasonable cause, the board shall provide the complainant, the respondent and the employing agency with a copy of the written determination on reasonable cause and a copy of the board staff's written investigation report. If reasonable cause is found, the determination of reasonable cause shall include a statement of the alleged violations. Prior to scheduling a public hearing, the board shall provide the respondent with an explanation of the option to request that the hearing be conducted by an administrative law judge if the penalty and costs for the alleged violation may be greater than \$500.

(2) Within 30 days of service of the written determination on reasonable cause, the respondent shall file an answer to the written determination on reasonable cause which shall state his/her response to the alleged violations. The answer shall include either a request for or a waiver of the right to request an administrative law judge if the penalty and costs for the alleged violation may be greater than \$500.

(3) Failure to file an answer to the written determination on reasonable cause within 30 days of service constitutes a default, and the board may proceed to resolve the case without further notice to, or hearing for the benefit of, the respondent.

(4) Within 10 days after service of a default order under subsection (3) of this section, the respondent may file a written motion requesting that the order be vacated, and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the board chair or a designated board member may adjourn further proceedings or conduct them without the participation of the respondent.

(5) Within 30 days of service of the written determination on reasonable cause, the respondent shall have the right to request an administrative law judge if the penalty and costs for the alleged violation may be greater than \$500. If the respondent fails to request an administrative law judge within 30 days, the right to have the matter presided over by an administrative law judge is waived. If the respondent does not request an administrative law judge within 30 days and has not defaulted pursuant to this section, the board staff may, at its option, commence an adjudicative proceeding to resolve the matter.

(6) The respondent shall be notified of the date of the hearing no later than 20 days before the hearing date.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-060, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-060, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-060, filed 10/30/96, effective 11/30/96.]

WAC 292-100-070 Repealed. See Disposition Table at beginning of this chapter.

WAC 292-100-080 Investigation procedures—Subpoenas.

(1) During the course of an investigation, the board, a board member, or the executive director, may issue a subpoena directed to any person who is likely to possess information which is relevant and material to the investigation. The subpoena shall:

(a) Specifically describe the information which is sought, and

(b) Require the production of information at a reasonable place and time, but no later than ten days from the date it is served, and

(c) Notify the person that if the information is not produced, the board will apply to the superior court for an appropriate order or other remedy. The subpoena may be personally delivered or sent by certified mail, return receipt requested.

(2) The board may issue a subpoena under RCW 42.52.390 to compel persons to appear and give testimony and may require the production of any books, papers, correspondence, memorandums or other documents which the board deems relevant and material.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-080, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-080, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-080, filed 10/30/96, effective 11/30/96.]

WAC 292-100-100 Prehearing conference—Rule. (1)

In any proceeding, the presiding officer upon his/her own motion or upon request by board staff or the respondent or their counsel, may direct the board staff or respondent to appear at a specified time and place for a conference to consider:

- (a) Simplification of issues;
- (b) The necessity of amendments to the hearing notice;
- (c) The possibility of obtaining stipulations, admissions of facts and of documents;
- (d) Limitation on the number of witnesses;
- (e) Authorizing discovery by any party;
- (f) Scheduling order; and
- (g) Procedural and such other matters as may aid in the disposition of the proceeding.

(2) Prehearing conferences may be held by telephone conference call or at a time and place specified by the presiding officer.

(3) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken and decisions made at the conference. If no objection to the order is filed with the presiding officer within seven days after the date the order is mailed, the order shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-100, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-100, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-100, filed 10/30/96, effective 11/30/96.]

WAC 292-100-110 Hearings—Discovery—Subpoenas.

(1) The board, a board member, or the executive director may issue subpoenas for discovery, subpoenas to persons to appear and give testimony, and may require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material and the board or presiding officer may issue protective orders as appropriate. Any party may issue subpoenas. All subpoenas for hearings must be filed with the presiding officer, together with proof of

proper service, at least five days prior to the date of the hearing for which they are issued. All subpoenas will be issued and may be enforced in the form and manner set forth in RCW 34.05.446 and WAC 10-08-120.

(2) The presiding officer, upon motion and before the time specified in the subpoena for compliance therewith, may:

(a) Quash or modify the subpoena if it is unreasonable and oppressive; or

(b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(3) The attendance of witnesses and such production of evidence may be required from any place within the state of Washington to any location where a hearing is being conducted.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-110, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-110, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-110, filed 10/30/96, effective 11/30/96.]

WAC 292-100-130 Hearings—Discovery—Depositions and interrogatories—Notice. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than five days in writing to the presiding officer and all parties. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined. On motion of a party to whom the notice is served, the presiding officer may for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-130, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-130, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-130, filed 10/30/96, effective 11/30/96.]

WAC 292-100-140 Depositions and interrogatories in hearings—Protection of parties and deponents. After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the presiding officer may order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or the presiding officer may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression.

At any time during the taking of the deposition, on motion of any party or the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the

deponent or party, the presiding officer may order the party conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it shall be resumed only upon the order of the presiding officer. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-140, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-140, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-140, filed 10/30/96, effective 11/30/96.]

WAC 292-100-150 Discovery—Production of documents and use at hearing. (1) Upon request by either party, copies of all materials to be presented at the hearing shall be provided to the requester within seven days of the request but, for good cause shown, not less than three business days prior to the date of the hearing.

(2) When documents are to be offered into evidence at the hearing, the one offering the exhibit shall provide a minimum of ten copies.

(3) If documentary evidence has not been exchanged prior to the hearing, the parties shall arrive at the hearing location or make documents available in sufficient time before the time scheduled for the hearing for the purpose of exchanging and making copies of exhibits to be introduced.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-150, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-150, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-150, filed 10/30/96, effective 11/30/96.]

WAC 292-100-160 Conduct of hearings. (1) A hearing shall be conducted pursuant to the Administrative Procedure Act (chapter 34.05 RCW) and its supporting regulations (chapter 10-08 WAC), shall be followed unless modified by chapter 292-100 WAC.

(2) A hearing shall be conducted either by the board or by an administrative law judge. If an administrative law judge participates, either by request of a respondent or by request of the board, the board may choose to sit with the administrative law judge to hear the matter and to enter a final order at the conclusions of the proceedings; or to have the administrative law judge hear the matter alone and prepare an initial order for review by the board. If an administrative law judge sits with the board, he or she shall rule on procedural and evidentiary matters.

(3) After the hearing the board may conclude that:

(a) The respondent(s) did not violate the act, as alleged, and dismiss the case; or

(b) The respondent(s) has (have) violated chapter 42.52 RCW; or

(c) The respondent(s) is (are) in violation of chapter 42.52 RCW, the board's remedy would be inadequate and the matter should be referred to the appropriate law enforcement agency as provided in RCW 42.52.470.

(4) Following a hearing in which the board participates, the board:

(a) Shall set forth in writing its findings of fact, conclusions of law and decision on the merits of the case; and

(b) Shall serve each party, the complainant and the employing agency, a copy of the findings of fact, conclusions of law and decision.

(5) Following a hearing in which the board does not participate, the administrative law judge shall:

(a) Set forth written findings of fact, conclusions of law and decision on the merits of the case in an initial order;

(b) Shall serve each party and board staff a copy of the findings of fact, conclusions of law and decision, including a statement of the right to request review of the initial order by the board.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-160, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-160, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-160, filed 10/30/96, effective 11/30/96.]

WAC 292-100-170 Review of initial orders by an administrative law judge. (1) An initial order by an administrative law judge shall become the final order of the board within forty-five days of the initial order unless:

(a) A board member determines that the initial order should be reviewed as provided in WAC 292-100-175;

(b) A party files a petition for review of the initial order within thirty days of the entry of the initial order.

(2) The petition for review will specify the portions of the initial order to which exception is taken and will refer to the evidence of record relied upon to support the petition.

(3) Petitions for review shall be filed with the executive director and served on all other parties. The party not filing the petition for review shall have twenty days to reply to the petition for review. The reply shall be filed with the executive director and copies of the reply shall be served on all other parties or their counsel at the time the reply is filed, and may cross-petition for review. If the reply contains a cross-petition, it shall specify portions of the initial order to which exception is taken by the replying party, and shall refer to the evidence of the record relied upon to support the reply.

(4) The board shall personally consider the whole record or such portions of it as may be cited by the parties.

(a) The board shall afford each party an opportunity to present written argument and may afford each party an opportunity to present oral argument.

(b) The board shall enter a final order disposing of the proceeding.

(c) The board shall serve copies of the final order on all parties, the complainant, and the employing agency.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-170, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-170, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-170, filed 10/30/96, effective 11/30/96.]

WAC 292-100-175 A board member's request for review of initial orders. (1) Five days after receiving an initial order by an administrative law judge the executive director shall serve a copy of the initial order upon each board member.

(2) A board member who is requesting review of an initial order shall provide written notice to the executive director within thirty days of service on the board member.

(3) Upon receipt of a board member's notice of review the executive director shall serve the notice of review on all other parties.

(4) The board shall personally consider the whole record or such portions of it as may be required for its deliberation.

(a) The board may afford each party an opportunity to present written argument or afford each party an opportunity to present oral argument.

(b) The board shall enter a final order disposing of the proceeding.

(c) The board shall serve copies of the final order on all parties, the complainant, and the employing agency.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-175, filed 6/13/01, effective 7/14/01.]

WAC 292-100-180 Brief adjudicative proceeding—Authority. Pursuant to RCW 34.05.482 through 34.05.494, after a finding of reasonable cause and notwithstanding the provision of WAC 292-100-050 through 292-100-170, the board may provide a brief adjudicative proceeding as set forth in WAC 292-100-190 for alleged violations of provisions in chapter 42.52 RCW in which the facts are undisputed, the violations appear to be relatively minor in nature, and the penalty and costs no greater than \$500 will be assessed for the violations.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-180, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-180, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-180, filed 10/30/96, effective 11/30/96.]

WAC 292-100-190 Brief adjudicative proceeding—Procedure. (1) A brief adjudicative proceeding may be presided over by the chair, or a member of the board designated by the chair.

(2) When a violation is alleged, before taking action, the executive director shall send the alleged violator notice, which shall include:

(a) The determination of reasonable cause and the investigative report;

(b) The maximum amount of the penalty and costs which can be imposed at the hearing; and

(c) Person's right to respond, within twenty days, either in writing or in person to explain his/her view of the matter.

(3) At the time of the hearing if the presiding officer believes alleged violations no longer meet the criteria in WAC 292-100-180, the presiding officer shall immediately adjourn the brief adjudicative proceeding and direct the matter to be scheduled for a public hearing by the full board or an administrative law judge.

(4) At the time any unfavorable action is taken, the presiding officer shall serve upon each party a written statement describing the violation, the reasons for the decision, the penalty and costs imposed and their right to request review by the board.

(5) The written decision of the presiding officer is an initial order. If no review is taken of the initial order, the initial order shall be the final order.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-190, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-190, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-190, filed 10/30/96, effective 11/30/96.]

WAC 292-100-200 Brief adjudicative proceeding—Administrative review procedures. (1) The board will conduct a review of the initial order upon the written or oral request of a party if the board receives the request within twenty days after the service of the initial order.

(2) If the parties have not requested review, the board may conduct a review of the initial order upon its own motion and without notice to the parties, but it may not take any action on review less favorable to any party than the original order without giving that party notice and an opportunity to explain that party's view of the matter.

(3) The order on review shall be in writing stating the findings made, and the reasons for the decision, and notice that judicial review is available. The order on review shall be entered within twenty-one days after the date of the initial order or of the request for review, whichever is later.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-200, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-200, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-200, filed 10/30/96, effective 11/30/96.]

WAC 292-100-210 Reconsideration of final orders.

(1) Within ten days of the service of a final order, any party may file a petition for reconsideration as provided in RCW 34.05.470.

(2) Any party may make a motion for reconsideration of a final order of the board as provided in RCW 34.05.470. The request for reconsideration shall be filed at the office of the board and served on the parties no later than ten days after service of the final order. A request or motion for reconsideration shall specify the grounds therefor.

(3) Any party may respond to a request for reconsideration. The response is due no later than ten days after the party is served with the request.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-210, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-210, filed 3/2/99, effective 4/2/99.]

WAC 292-100-220 Effective date. When WAC 292-100-007 through 292-100-210 go into effect, they will apply to all pending cases.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-220, filed 6/13/01, effective 7/14/01.]

**Chapter 292-110 WAC
AGENCY SUBSTANTIVE RULES**

WAC

292-110-050	Advisory opinions.
292-110-060	Compensation for outside activities and contracting with state agencies.

[2002 WAC Supp.—page 948]

WAC 292-110-050 Advisory opinions. State officers and employees are encouraged to seek an advisory opinion whenever they have questions concerning ethical standards or potential conflicts of interest. Advisory opinions are intended to provide guidance to a state officer or state employee in advance of an action or decision and thereby prevent ethics violations.

(1) Whenever requested by a state officer, state employee, or other person, or whenever it deems it in the public interest, the board shall issue advisory opinions. Requests for advisory opinions, if not issued in response to a motion by the board, shall be written and signed, and addressed to either the chair of the board or the executive director. Requests may be made by electronic mail. Each request should provide sufficient information and circumstances to enable the board to evaluate the request and issue the advisory opinion.

(2) Upon receiving a request for an advisory opinion, the executive director shall, within fifteen calendar days of receipt, acknowledge the request. Persons requesting advisory opinions shall be notified of the status of the request at thirty day intervals until final action is taken.

(3) The board shall either:

(a) Deny the request and state the reason(s) for the denial; or,

(b) Issue a written advisory opinion.

(4) An advisory opinion is final when it has been approved by the board and is signed by the executive director.

(5) A person requesting an advisory opinion may, upon receiving the opinion, petition the board for reconsideration within thirty days of the date the opinion is issued if the person believes that the opinion is erroneous in factual detail. A petition for reconsideration shall be written and signed, and shall briefly state the errors of fact. The board may deny the petition if it lacks merit, or if the person who submitted the request provided erroneous information to the board.

(6) If a state officer or state employee receives an advisory opinion and fails to make a good faith effort to follow its guidance, the board shall give this fact weight when considering a complaint alleging a violation based on the advice received.

(7) Informal staff analysis. It is the responsibility of the executive director to provide ethics advice to any state officer, state employee, or other person; however, a state officer, state employee, or other person may only rely on written ethics advice. In providing such advice, the executive director may issue a written nonbinding staff analysis. A non-binding staff analysis is intended to provide ethics guidance and advice in an expeditious manner, but does not substitute for a formal advisory opinion from the board. The executive director shall provide a disclaimer to the person requesting the nonbinding staff analysis that the advice is solely the opinion of the executive director and not the opinion of the board or in any respect binding on the board. Only advisory opinions issued by the board and complaints decided by the board may be relied on for determining how the board will interpret a provision of the Ethics in Public Service Act.

(a) In considering a complaint alleging a violation, the board will give weight to the fact that the person charged in

the complaint relied in good faith on written advice from the executive director.

(b) The board may review staff analyses provided under this subsection and may approve or disapprove of any advice so provided. However, any such approval or disapproval is limited to whether staff had reasonable grounds for the advice and should not be interpreted as indicating approval or disapproval of the advice provided.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-080, § 292-110-050, filed 6/19/01, effective 7/20/01. Statutory Authority: RCW 42.52.360 (2)(b) and (c). 98-03-045, § 292-110-050, filed 1/15/98, effective 2/15/98.]

WAC 292-110-060 Compensation for outside activities and contracting with state agencies. (1) The primary purpose of the Ethics in Public Service Act is to prevent conflicts of interest that impair the impartial and independent judgment of state officers and employees. A conflict of interest may occur when a state officer or state employee accepts compensation for outside activities, and acceptance conflicts with the performance of official duties on behalf of the state and the citizens of Washington. Conflicts of interest occur whenever a state officer or state employee has a beneficial interest in a transaction with the state; accepts outside compensation for the performance or nonperformance of an official duty; or, accepts or seeks outside compensation relating to a matter in which the officer or employee participated in an official capacity. A conflict of interest extends to those matters in which a state officer or employee exercises responsibility. Potential conflicts of interest relating to the receipt of compensation for outside activities may be resolved by seeking the review and prior approval of the executive ethics board.

(2) A state officer or employee may not receive anything of economic value under a contract or grant outside his or her official duties unless each of the following conditions is met:

(a) The contract or grant is legitimate and actually performed;

(b) The contract or grant is not within the state officer's or employee's official duties, is not under his or her supervision; is not created or authorized by the state officer or employee in an official capacity, and is not within an area of his or her official responsibility;

(c) The contract or grant is not performed for nor compensated by a person from whom the state officer or employee would not be able to accept a gift; and,

(d) The contract or grant would not require the disclosure of confidential or nonpublic information.

(3) A state officer or employee may not engage in a business or transaction or professional activity, or incur an obligation of any nature if such activities may conflict with the proper discharge of official duties.

(4) A state officer or employee may not enter into a contract or receive a grant, or have a beneficial interest in a contract or grant with a state agency unless all conditions in section two are met, and one of the following conditions are satisfied:

(a) The contract bid or grant application is awarded through an open and competitive bidding process and more than one bid or grant application is received; or

(b) If only one bid or application is received, or the process for awarding the contract or grant was not open and competitive, and the executive ethics board has advised that the employee's interest in the contract or grant is not in conflict with the proper discharge of the employee's official duties.

(5) Provided that the conditions in sections two and three are met, the following contracts are approved by the executive ethics board:

(a) A contract or grant whereby the state officer or state employee receives assistance through state programs or federal programs administered by the state when they are entitled to receive such assistance by law and on the same basis as similarly situated citizens, and when the officer or employee does not exercise discretionary judgement with regard to an assistance program for which he or she is otherwise eligible;

(b) A contract to perform teaching duties at a bona fide community college, vocational-technical school, or institution of higher learning, provided no state resources are used to perform the duties; there is no conflict with the performance of official duties; and the state officer or state employee did not use his or her official position to influence the contract of employment; and,

(c) A contract held by a spouse, in which the officer or employee has a beneficial interest, with a state agency, provided that the officer or employee did not participate in the contract.

(d) An employee who has a contract or grant or a beneficial interest therein which is approved by the board under section (5)(a)-(c) of this rule is not required to file a separate application for approval of the contract under section (6). However, the employee is responsible for determining that the criteria in sections (2) and (3) are satisfied.

(e) An employee who is awarded a contract or grant under section (5)(a)-(c) of this rule shall file a copy of the contract with the board. However, if the employee's only interest is a beneficial interest, the contract need not be filed with the board.

(6) State officers and employees seeking the approval of the board for a contract, grant application, or outside employment shall provide the following information to the executive director no later than thirty days prior to the commencement of the contract:

(a) A description of current official duties and responsibilities;

(b) A statement of the work to be performed and, a copy of the contract;

(c) The duration and dollar value of the contract, if applicable;

(d) A statement that no state resources will be used to perform the outside employment or to fulfill the contract or grant; and,

(e) A description of how the work will be performed without the use of state resources.

(7) The executive director shall review the contract or grant application terms and related documents and may determine whether there could be a potential conflict. If the board secretary determines:

(a) There would be no potential conflict under sections two and three of this rule, the executive director shall approve the contract or grant application.

(b) There could be a potential conflict under sections two and three of this rule, the executive director shall refer the contract or grant application to the board for approval or disapproval.

(8) If a contract has been amended or the scope of work altered, and the effect of the amendment or alteration may create a potential conflict of interest under sections two and three of this rule, the employee must resubmit the contract to the board at least fifteen days prior to commencement of work under the amended or altered contract.

(9) If a series of substantially identical contracts or grants with a state agency is anticipated, the state officer or employee may request that the board preapprove such contracts or grants. Preapproval shall be effective for the period of one calendar year, after which the state officer or employee shall resubmit the request.

(10) The executive director shall provide written notice of any action on a contract bid, grant application or request for outside employment within fifteen working days of the board's action.

(11) Final contracts reviewed under this rule shall be filed with the executive director within thirty days of execution.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-110-060, filed 6/19/01, effective 7/20/01. Statutory Authority: RCW 42.52.360 (2)(b). 98-04-001, § 292-110-060, filed 1/21/98, effective 2/21/98.]

Chapter 292-130 WAC

AGENCY ORGANIZATION—PUBLIC RECORDS

WAC

292-130-020	Function—Organization—Office.
292-130-030	Operations and procedures.
292-130-040	Executive director.
292-130-060	Index prior to January 1, 2001.
292-130-065	Index after January 1, 2001.
292-130-070	Public records—Officer.
292-130-080	Hours for seeking public records.
292-130-130	Exemptions.

WAC 292-130-020 Function—Organization—Office. The executive ethics board was created by chapter 42.52 RCW to enforce the state's ethics law and rules adopted under it with respect to statewide elected officers and all other officers and employees in the executive branch, boards and commissions, and institutions of higher education.

The executive ethics board consists of five members, appointed by the governor as follows: One member shall be a classified service employee; one member shall be a state officer or state employee in an exempt position; one member shall be a citizen selected from a list of three names submitted by the attorney general; one member shall be a citizen selected from a list of three names submitted by the state auditor; and, one member shall be a citizen at large selected by the governor.

The board's administrative office is located at 2425 Bristol Court S.W. 1st Floor, P.O. Box 40149, Olympia, WA 98504-0149. The office hours are 8:00 a.m. to noon and 1:00

p.m. to 5:00 p.m., Monday through Friday except legal holidays and during regularly scheduled board meetings.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-130-020, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-020, filed 11/3/98, effective 12/4/98.]

WAC 292-130-030 Operations and procedures. The board holds regular scheduled meetings in accordance with a schedule filed with the code reviser's office and published in the *Washington State Register*. All meetings are conducted in accordance with the Open Public Meetings Act (chapter 42.30 RCW). Three members of the board constitute a quorum. Any matter coming before the board may be decided by a majority vote of those members present and voting. Minutes shall be taken at all meetings.

The board issues advisory opinions; develops education and training materials; investigates, hears, and determines complaints; reviews and approves agency ethics policies; and, reviews, approves, or denies contracts between state officers and employees and state agencies.

Written communications intended for board consideration or action shall be filed with the administrative office.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-130-030, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-030, filed 11/3/98, effective 12/4/98.]

WAC 292-130-040 Executive director. The executive director shall perform the following duties under the general authority and supervision of the board:

(1) Make initial determinations, pursuant to RCW 42.52.425 and WAC 292-100-045, regarding complaints received by the board;

(2) Render informal nonbinding advice, pursuant to RCW 42.52.360 (2)(b) and (c) and WAC 292-110-050;

(3) Make initial determinations, pursuant to RCW 42.52.120 and WAC 292-110-060, regarding approval of certain contracts between state agencies and state officers or employees;

(4) Act as records officer and administrative arm of the board;

(5) Coordinate the policies of the board and the activities of board staff, supervise board staff as appropriate;

(6) Act as a liaison between the board and other public agencies; and

(7) Conduct ethics training and information outreach.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-130-040, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-040, filed 11/3/98, effective 12/4/98.]

WAC 292-130-060 Index prior to January 1, 2001. Prior to January 1, 2001, the board indexed by subject matter the advisory opinions of the board. The index is maintained in the administrative office and is accessible at the board's web site located at www.wa.gov/ethics.

The volume of correspondence managed by the office is such that it would be unduly burdensome to formulate and maintain an index of all correspondence. In lieu of an index,

the following filing system is utilized at the board's administrative office:

- (1) Complaints received by the board are indexed by year, number, and name of the respondent and agency.
- (2) Whistleblower referrals from the state auditor are indexed by whistleblower case number.
- (3) Contract approvals are filed by year and name of the state employee.
- (4) Agency ethics policies are filed by agency name.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-130-060, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-060, filed 11/3/98, effective 12/4/98.]

WAC 292-130-065 Index after January 1, 2001. The board has indexed by subject matter the advisory opinions of the board. The index is maintained in the administrative office and is accessible at the board's web site located at www.wa.gov/ethics.

The volume of correspondence managed by the office is such that it would be unduly burdensome to formulate and maintain an index of all correspondence. In lieu of an index, the following filing system is utilized at the board's administrative office:

- (1) Complaints, including referrals from the state auditor, received by the board are indexed by year, month, day, and sequential number. Complaints that are referred for full investigation are indexed by year and sequential case number.
- (2) Requests for advisory opinions, including informal staff analysis, are indexed by year, month, day, and sequential number. Advisory opinions issued by the board are indexed by year and sequential opinion number.
- (3) Requests for contract approvals, under WAC 292-110-060 are indexed by year, month, day, sequential number and name of the state employee.
- (4) Requests for board review of agency ethics policies, filed under RCW 42.52.360(4) are indexed by year, month, day, and sequential number. Agency ethics policies that are approved by the board are indexed by year, month, day, sequential policy number, and agency name.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-130-065, filed 6/13/01, effective 7/14/01.]

WAC 292-130-070 Public records—Officer. The public records officer for the board shall be the executive director to the board.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-130-070, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-070, filed 11/3/98, effective 12/4/98.]

WAC 292-130-080 Hours for seeking public records. Public records shall be available for inspection and copying from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays and during regularly scheduled board meetings.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-130-080, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-080, filed 11/3/98, effective 12/4/98.]

WAC 292-130-130 Exemptions. (1) The board reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 292-130-060 is exempt under the provisions of RCW 42.17.310.

(2) It is the policy of the board during the course of any investigation that all records generated or collected as a result of that investigation are exempt from public inspection and copying under RCW 42.17.310 (1)(d). The investigation is not considered complete until a case is resolved either by a stipulation and settlement that is signed by all parties; or, when the board enters a final order after a public hearing. If a public records request is made following a signed stipulation and settlement or a final order for any such record which implicates the privacy of an individual, written notice of the records request will be provided to the individual in order that such individual may request a protective order from a court under RCW 42.17.330. The following records are not considered part of the investigation file and are releasable upon request:

- (a) Complaints, upon receipt by the respondent;
- (b) The board staff's preliminary review or investigation report;
- (c) The board's findings of reasonable cause or no reasonable cause; and
- (d) Proposed stipulations and settlements, upon receipt by the board.

(3) In addition, pursuant to RCW 42.17.310, the board reserves the right to withhold or delete information when it makes available or publishes any public record in any cases where there is reason to believe that disclosure of such details would be otherwise exempt from disclosure under chapter 42.17 RCW. The public records officer will fully justify such deletion in writing.

(4) Any denial of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the records withheld.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-130-130, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-130, filed 11/3/98, effective 12/4/98.]

Title 296 WAC

LABOR AND INDUSTRIES, DEPARTMENT OF

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