

# Chapter 390-37 WAC

## ENFORCEMENT HEARING (ADJUDICATIVE PROCEEDING) RULES

### WAC

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### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

390-37-080	Enforcement procedures—Prehearing conference. [Order 81, § 390-37-080, filed 7/22/76.] Repealed by 84-12-017 (Order 84-03), filed 5/25/84. Statutory Authority: RCW 42.17.370(1).
390-37-200	Investigative hearings—Commission policy. [Order 81, § 390-37-200, filed 7/22/76.] Repealed by 84-12-017 (Order 84-03), filed 5/25/84. Statutory Authority: RCW 42.17.370(1).
390-37-205	Investigative hearings—Respondent's notice to appear. [Order 81, § 390-37-205, filed 7/22/76.] Repealed by 84-12-017 (Order 84-03), filed 5/25/84. Statutory Authority: RCW 42.17.370(1).

390-37-210	Hearings—Subpoenas. [Statutory Authority: RCW 42.17.370. 90-16-083, § 390-37-210, filed 7/31/90, effective 8/31/90. Statutory Authority: RCW 42.17-370(1). 86-04-071 (Order 86-01), § 390-37-210, filed 2/5/86; 85-15-020 (Order 85-03), § 390-37-210, filed 7/9/85; 84-12-017 (Order 84-03), § 390-37-210, filed 5/25/84; Order 81, § 390-37-210, filed 7/22/76.] Repealed by 91-16-072, filed 8/2/91, effective 9/2/91. Statutory Authority: RCW 42.17.370.
390-37-215	Investigative hearings—Conducted by commission or hearing officer. [Order 81, § 390-37-215, filed 7/22/76.] Repealed by 84-12-017 (Order 84-03), filed 5/25/84. Statutory Authority: RCW 42.17.370(1).
390-37-220	Investigative hearings—Procedures. [Order 81, § 390-37-220, filed 7/22/76.] Repealed by 84-12-017 (Order 84-03), filed 5/25/84. Statutory Authority: RCW 42.17.370(1).
390-37-225	Investigative hearings—Disposition of case by hearing officer. [Order 81, § 390-37-225, filed 7/22/76.] Repealed by 84-12-017 (Order 84-03), filed 5/25/84. Statutory Authority: RCW 42.17.370(1).
390-37-230	Investigative hearings—Disposition of case by commission. [Order 81, § 390-37-230, filed 7/22/76.] Repealed by 84-12-017 (Order 84-03), filed 5/25/84. Statutory Authority: RCW 42.17.370(1).
390-37-300	Late filings—Civil penalties. [Statutory Authority: RCW 42.17.370(1). 82-02-007 (Order 81-04), § 390-37-300, filed 12/28/81; Order 84, § 390-37-300, filed 8/18/76.] Repealed by 82-14-016 (Order 82-04), filed 6/28/82. Statutory Authority: RCW 42.17.370(1).
390-37-305	Late filings—Administrator review. [Statutory Authority: RCW 42.17.370(1). 82-02-007 (Order 81-04), § 390-37-305, filed 12/28/81; Order 84, § 390-37-305, filed 8/18/76 and 8/20/76.] Repealed by 82-14-016 (Order 82-04), filed 6/28/82. Statutory Authority: RCW 42.17.370(1).
390-37-310	Late filings—Waiver of penalty. [Order 84, § 390-37-310, filed 8/18/76.] Repealed by 82-02-007 (Order 81-04), filed 12/28/81. Statutory Authority: RCW 42.17-370(1).
390-37-312	Late filings—Criteria for waiver; procedures for disposition. [Statutory Authority: RCW 42.17.370(1). 82-02-007 (Order 81-04), § 390-37-312, filed 12/28/81.] Repealed by 82-14-016 (Order 82-04), filed 6/28/82. Statutory Authority: RCW 42.17.370(1).
390-37-315	Late filings—Petition for waiver—Disposition by commission. [Order 84, § 390-37-315, filed 8/18/76.] Repealed by 82-02-007 (Order 81-04), filed 12/28/81. Statutory Authority: RCW 42.17.370(1).
390-37-320	Late filings—Waiver petition—Judicial review and enforcement. [Statutory Authority: RCW 42.17.370(1). 82-02-007 (Order 81-04), § 390-37-320, filed 12/28/81; Order 84, § 390-37-320, filed 8/18/76.] Repealed by 82-14-016 (Order 82-04), filed 6/28/82. Statutory Authority: RCW 42.17.370(1).

### WAC 390-37-001 Enforcement cases—Jurisdiction.

The commission enforces chapter 42.17A RCW concerning campaign financing, lobbyist reporting, reporting of public officials' financial affairs, reporting by public treasurers, political advertising, campaign contribution limitations and the other provisions in chapter 42.17A RCW. The commission does not enforce the Public Records Act under chapter 42.56 RCW. RCW 42.56.550 provides for direct review by the superior courts for persons seeking to enforce chapter 42.56 RCW.

[Statutory Authority: RCW 42.56.100, 42.56.040, and 42.17A.110. 12-18-015, § 390-37-001, filed 8/24/12, effective 9/24/12. Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-001, filed 11/4/03, effective 12/5/03.]

**WAC 390-37-010 Enforcement procedures—General.** This chapter provides the procedures for adjudicative proceedings (hearings) in compliance cases under the commission's jurisdiction. The procedures are also governed by RCW 42.17A.755, and the adjudicative proceedings provisions of chapter 34.05 RCW. Unless they differ or are otherwise specifically addressed in this chapter, the procedure, are supplemented by the model rules of procedure in chapter 10-08 WAC. In lieu of holding an adjudicative proceeding or issuing an order as a result of such a proceeding, the commission may refer the matter to the attorney general or other law enforcement agency pursuant to RCW 42.17A.105(5) and 42.17A.755.

In addition, the procedures for requesting a hearing on a petition to modify or suspend reporting requirements are provided in RCW 42.17A.120 and chapters 390-24 and 390-28 WAC.

The policy of the commission shall be to facilitate the resolution of compliance matters in a fair and expeditious manner. The commission encourages the parties to consider alternative resolution or partial resolution procedures such as stipulations under WAC 390-37-090, when appropriate. Informal settlements are encouraged by RCW 34.05.060.

[Statutory Authority: RCW 42.17A.110. 12-03-002, § 390-37-010, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-010, filed 11/4/03, effective 12/5/03; Order 79, § 390-37-010, filed 6/25/76.]

**WAC 390-37-020 Enforcement procedures—Initiation of complaint.** (1) A complaint alleging a violation of chapter 42.17A RCW may be brought to the attention of the commission staff by:

- (a) A member of the public;
- (b) The commission staff;
- (c) A commission member, who shall then be disqualified from participating in the decision of an enforcement hearing that may arise from the complaint;
- (d) Referral from the office of the attorney general or any other law enforcement agency;
- (e) A state agency, local agency or member of a state or local agency.

(2) The person or entity against whom a complaint is filed shall be known as the respondent.

[Statutory Authority: RCW 42.17A.110. 12-03-002, § 390-37-020, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. 93-24-003, § 390-37-020, filed 11/18/93, effective 12/19/93. Statutory Authority: RCW 42.17.370(1). 84-12-017 (Order 84-03), § 390-37-020, filed 5/25/84; Order 79, § 390-37-020, filed 6/25/76.]

**WAC 390-37-030 Enforcement procedures—Citizen complaints filed with the commission.** (1) When a citizen complaint has been filed with the agency pursuant to WAC 390-37-040, neither the complainant nor any other person shall have special standing to participate or intervene in the investigation or consideration of the complaint by the commission. However, the staff shall give notice to the complainant of any open commission hearings on the matter and the

complainant may be called as a witness in any enforcement hearing or investigative proceeding.

(2) The complainant or any other person may submit documentary evidence and/or written factual or legal statements to the staff at any time up to and including the fifth calendar day before the date of any enforcement hearing or proceeding.

(3) A person not satisfied with the dismissal of a complaint by the commission or its executive director may pursue an appropriate remedy under RCW 42.17A.765(4).

[Statutory Authority: RCW 42.17A.110. 12-03-002, § 390-37-030, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370(1). 04-12-058, § 390-37-030, filed 5/28/04, effective 6/28/04. Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-030, filed 11/4/03, effective 12/5/03; 02-23-001, § 390-37-030, filed 11/6/02, effective 12/7/02. Statutory Authority: RCW 42.17.370(1). 86-04-071 (Order 86-01), § 390-37-030, filed 2/5/86; 84-12-017 (Order 84-03), § 390-37-030, filed 5/25/84; Order 79, § 390-37-030, filed 6/25/76.]

**WAC 390-37-040 Enforcement procedures—Procedures for filing complaints with the commission.** (1) A complaint filed with the commission, relating to an elected official or a candidate for elective office, shall be in writing and signed by the complainant under oath.

(2) A complaint filed with the commission, other than a complaint specified in subsection (1) of this section, shall be made in writing.

(3) A complaint filed under the provisions of either subsection (1) or (2) of this section shall include:

(a) A statement of the nature of the alleged violation or violations, date, time and place of each occurrence and name of person or persons responsible;

(b) All available documentation and other evidence which the complainant is able to supply to demonstrate a reason for believing that a violation of the sections of chapter 42.17A RCW that are enforced by the commission has occurred; and

(c) The name, address, telephone number, and other contact information for the complainant.

[Statutory Authority: RCW 42.17A.110. 12-03-002, § 390-37-040, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-040, filed 11/4/03, effective 12/5/03. Statutory Authority: RCW 42.17.370(1). 84-12-017 (Order 84-03), § 390-37-040, filed 5/25/84; Order 79, § 390-37-040, filed 6/25/76.]

**WAC 390-37-041 Enforcement procedures—Allegations submitted to the attorney general's office and/or prosecuting attorneys.** When a person has notified the attorney general or prosecuting attorney under RCW 42.17A.765(4) that there is reason to believe a violation of the sections of chapter 42.17A RCW enforced by the commission has occurred, and the attorney general or prosecutor forwards the complaint to the commission, commission staff may:

- (1) Initiate an investigation;
- (2) Submit a report to the commission that may include a recommendation;
- (3) Schedule the matter for an adjudicative proceeding before the commission following investigation; and/or
- (4) Take any other steps consistent with the agency's authority and resources.

[Statutory Authority: RCW 42.17A.110. 12-03-002, § 390-37-041, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370(1). 04-12-059, § 390-37-041, filed 5/28/04, effective 6/28/04. Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-041, filed 11/4/03, effective 12/5/03.]

**WAC 390-37-050 Enforcement procedures—Respondent's notice of complaint.** Within ten business days of receipt by the commission of a complaint which on its face appears to have merit, the commission shall notify the respondent that a complaint has been filed. The notice shall set forth the nature of the complaint and its origin (citizen complaint, commission or other) and the statutory provision alleged to have been violated.

[Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-050, filed 11/4/03, effective 12/5/03. Statutory Authority: RCW 42.17.370(1). 79-08-046 (Order 79-03), § 390-37-050, filed 7/19/79; Order 81, § 390-37-050, filed 7/22/76.]

**WAC 390-37-060 Enforcement procedures—Investigation of complaints—Initiation of hearing (adjudicative proceeding).** (1) Upon receipt of a complaint the following will occur:

(a) The executive director will conduct an initial review of the complaint to determine if it is obviously unfounded or frivolous or appears on its face to have merit. An initial review is a preliminary investigation to determine if there is sufficient ground indicating that a material violation of chapter 42.17A RCW may have occurred and/or the respondent may not be in substantial compliance with the relevant statutes and rules.

(b) Whenever an initial review of a complaint indicates that a material violation of chapter 42.17A RCW may have occurred and/or the respondent may not be in substantial compliance with the relevant statutes and rules, the executive director may direct a formal investigation be conducted.

(c) If the executive director determines a formal investigation will require the expenditure of substantial resources, the executive director may request review and concurrence by the commission before proceeding.

(2) The executive director shall initiate an adjudicative proceeding or provide a report to the commission whenever an investigation reveals facts that the executive director has reason to believe are a material violation of chapter 42.17A RCW and do not constitute substantial compliance.

(3) The respondent shall be notified of the date of the adjudicative proceeding no later than ten calendar days before that date. The notice shall contain the information required by RCW 34.05.434. The complainant shall also be provided a copy of this notice.

(4) It is the policy of the commission 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 42.56.240(1).

(a) The records are exempt until:

(i) The enforcement matter is scheduled for an adjudicative proceeding;

(ii) After receiving a report on an enforcement matter, the commission accepts the investigation as complete and moves the matter forward to an adjudicative proceeding, or dismisses the complaint, or refers the matter to law enforcement authorities under RCW 42.17A.105 or 42.17A.755(3);

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(iii) The commission or chair concur in a dismissal by the executive director; or

(iv) The commission or executive director otherwise finally disposes of the complaint.

(b) Without waiving any exemptions from public disclosure that are otherwise available for pending investigations, the commission may make public:

(i) A copy of a complaint filed with or submitted to the commission, including any attachments; and

(ii) Materials concerning an enforcement matter that are placed on the commission's web site with a commission meeting agenda.

(c) If a request is made for any such record that implicates the privacy of an individual as defined in RCW 42.56.-050, written notice of the records request may be provided to the individual in order that such individual may request a protective order from a court under RCW 42.56.540.

(d) Certain documents provided to the commission shall be returned to candidates, campaigns, or political committees as required by RCW 42.17A.105 within seven calendar days of the commission's final action upon completion of an audit or field investigation.

[Statutory Authority: RCW 42.56.100, 42.56.040, and 42.17A.110. 12-18-015, § 390-37-060, filed 8/24/12, effective 9/24/12. Statutory Authority: RCW 42.17A.110. 12-03-002, § 390-37-060, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. 05-11-001, § 390-37-060, filed 5/4/05, effective 6/4/05; 03-22-065, § 390-37-060, filed 11/4/03, effective 12/5/03; 93-24-003, § 390-37-060, filed 11/18/93, effective 12/19/93; 91-16-072, § 390-37-060, filed 8/2/91, effective 9/2/91. Statutory Authority: RCW 42.17.370(1). 86-04-071 (Order 86-01), § 390-37-060, filed 2/5/86; 84-12-017 and 84-12-029 (Orders 84-03 and 84-03A), § 390-37-060, filed 5/25/84 and 5/29/84; Order 81, § 390-37-060, filed 7/22/76.]

**WAC 390-37-063 Enforcement procedures—Demand for information—Subpoenas.** (1) During the course of an audit or an investigation, the executive director may issue a subpoena directed to any person who probably possesses information which is relevant and material to the audit or the investigation. The subpoena shall

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

(b) Set forth a reasonable time and place for the production of the information, and

(c) Notify the person that if the information is not produced, the executive director 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 commission may issue a subpoena under RCW 42.17A.110(6) and WAC 390-37-120 to compel persons to appear and give testimony and may require the production of any books, papers, correspondence, memorandums or other documents which the commission deems relevant and material.

[Statutory Authority: RCW 42.17A.110. 12-03-002, § 390-37-063, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. 03-18-003, § 390-37-063, filed 8/20/03, effective 9/20/03; 93-24-003, § 390-37-063, filed 11/18/93, effective 12/19/93. Statutory Authority: RCW 42.17.370(1). 86-04-071 (Order 86-01), § 390-37-063, filed 2/5/86; 82-02-007 (Order 81-04), § 390-37-063, filed 12/28/81.]

**WAC 390-37-070 Enforcement procedures—Complaints dismissed by executive director.** The executive

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director, with the concurrence of the chair or the chair's designee, at any time prior to consideration by the commission, may dismiss a complaint which on its face, or as shown by investigation, does not show reason to believe that a material violation of the sections of chapter 42.17A RCW that are enforced by the commission has occurred and/or shows that the respondent is in substantial compliance with the relevant statutes or rules.

[Statutory Authority: RCW 42.17A.110, 12-03-002, § 390-37-070, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370, 03-22-065, § 390-37-070, filed 11/4/03, effective 12/5/03. Statutory Authority: RCW 42.17.390, 94-05-010, § 390-37-070, filed 2/3/94, effective 3/6/94. Statutory Authority: RCW 42.17.370(1), 86-04-071 (Order 86-01), § 390-37-070, filed 2/5/86; 84-12-017 (Order 84-03), § 390-37-070, filed 5/25/84; Order 81, § 390-37-070, filed 7/22/76.]

**WAC 390-37-090 Informal settlement—Cases resolvable by stipulation prior to an enforcement hearing (adjudicative proceeding), or by other alternative dispute mechanisms.** (1) RCW 34.05.060 authorizes agencies to establish by rule specific procedures for attempting and executing informal settlement of matters. The following procedures are available for informal dispute resolution prior to an adjudicative proceeding that may make more elaborate proceedings under the Administrative Procedure Act unnecessary.

(a) Any enforcement matter before the commission which has not yet been heard in an adjudicative proceeding may be resolved by settlement. The respondent shall communicate his or her request to the executive director or designee (commission staff), setting forth all pertinent facts and the desired remedy. Settlement negotiations shall be informal and without prejudice to rights of a participant in the negotiations.

(b) When the executive director and respondent agree to terms of any stipulation of facts, violations, and/or penalty, commission staff shall prepare the stipulation for presentation to the commission.

(c) Any proposed stipulation shall be in writing and signed by each party to the stipulation or his or her representative. The executive director shall sign for commission staff. Any stipulation to facts and violations shall be provided prior to or at the hearing. Stipulations to penalty shall be provided by 4:00 p.m. the business day preceding the hearing. The commission has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the commission accepts the stipulation or modifies the stipulation with the agreement of the opposing party, the commission shall enter an order in conformity with the terms of the stipulation. If the commission rejects the stipulation or the opposing party does not agree to the commission's proposed modifications to the stipulation, and if no revised stipulation or staff report is presented to the commission, then an adjudicative proceeding shall be scheduled and held.

(2) Parties are encouraged to be creative in resolving cases without further litigation where appropriate.

(3) Following a stipulation of facts or law, if the commission determines certain sanctions or other steps are required by the respondent as a result of the alternative dispute resolution including stipulations and that it intends to enter an order, and the respondent does not timely raise an objection

at the hearing, it shall be presumed that the respondent has waived objections and appeals, and agrees to the entry of the order.

[Statutory Authority: RCW 42.17.370, 06-14-057, § 390-37-090, filed 6/29/06, effective 7/30/06; 05-11-001, § 390-37-090, filed 5/4/05, effective 6/4/05; 03-22-065, § 390-37-090, filed 11/4/03, effective 12/5/03; 91-16-072, § 390-37-090, filed 8/2/91, effective 9/2/91. Statutory Authority: RCW 42.17.370(1), 86-04-071 (Order 86-01), § 390-37-090, filed 2/5/86; 84-12-017 (Order 84-03), § 390-37-090, filed 5/25/84; Order 81, § 390-37-090, filed 7/22/76.]

**WAC 390-37-100 Enforcement procedures—Conduct of hearings (adjudicative proceedings).** (1) An enforcement hearing (adjudicative proceeding) shall be conducted pursuant to the Administrative Procedure Act (chapter 34.05 RCW). Chapter 390-37 WAC further governs these proceedings, as supplemented by chapter 10-08 WAC. To the extent chapters 390-37 and 10-08 WAC differ, chapter 390-37 WAC controls.

(2) An adjudicative proceeding shall be heard by the commission, except for brief adjudicative proceedings which are conducted by the chair or the chair's designee.

(3) The commission shall have the authority to:

- (a) Determine the order of presentation of evidence;
- (b) Administer oaths and affirmations;
- (c) Rule on procedural matters, objections, and motions;
- (d) Rule on offers of proof and receive relevant evidence;

(e) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;

(f) Interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(g) Take official notice of facts pursuant to RCW 34.05.452(5);

(h) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

(i) Permit or require oral argument or briefs and determine the time limits for submission thereof;

(j) Issue an order of default pursuant to RCW 34.05.440;

(k) Take any other action necessary and authorized by any applicable statute or rule;

(l) Waive any requirement of these rules unless a party shows that it would be prejudiced by such a waiver; and

(m) The commission chair or the chair's designee may conduct the procedural aspects of the adjudicative proceeding under (a) through (l) of this subsection, unless a majority of members present vote to seek a full commission decision on any particular matter.

(4) The commission may decide dispositive motions, and any other matters referred to it by the presiding officer at a prehearing conference.

(5) After an adjudicative proceeding by the commission, the commission may find that:

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

(b) Respondent violated chapter 42.17A RCW, as alleged, and determine the sanction, if any, to be imposed; or

(c) Respondent is in apparent violation of chapter 42.17A RCW, its own remedies are inadequate and enter its

order referring the matter to the appropriate law enforcement agency as provided in RCW 42.17A.105 and 42.17A.755.

(6) Upon the conclusion of an adjudicative proceeding, the commission:

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

(b) Shall serve the respondent a copy of the findings of fact, conclusions of law and decision and order.

(7) The executive director is authorized to sign orders on behalf of the commission.

(8) When the commission finds an apparent violation and refers the matter to an enforcement agency, the commission shall give to the respondent written notice of such finding and order of referral.

[Statutory Authority: RCW 42.17A.110, 12-03-002, § 390-37-100, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370, 03-22-065, § 390-37-100, filed 11/4/03, effective 12/5/03; 91-16-072, § 390-37-100, filed 8/2/91, effective 9/2/91; 90-16-083, § 390-37-100, filed 7/31/90, effective 8/31/90. Statutory Authority: RCW 42.17.370(1), 86-04-071 (Order 86-01), § 390-37-100, filed 2/5/86; 85-15-020 (Order 85-03), § 390-37-100, filed 7/9/85; 84-12-017 (Order 84-03), § 390-37-100, filed 5/25/84; Order 81, § 390-37-100, filed 7/22/76.]

**WAC 390-37-103 Commission options following receipt of a staff report on alleged violations.** Upon receipt of a staff report concerning alleged violations of those sections of chapter 42.17A RCW that the commission enforces, the commission may:

(1) Schedule the matter for a hearing (adjudicative proceeding); or

(2) Issue an order; or

(3) Refer the matter or apparent violations to the attorney general or other enforcement agency pursuant to RCW 42.17A.105(5) and 42.17A.750.

[Statutory Authority: RCW 42.17.130 and 42.17.093, 12-01-047, § 390-37-103, filed 12/14/11, effective 1/14/12. Statutory Authority: RCW 42.17.370, 03-22-065, § 390-37-103, filed 11/4/03, effective 12/5/03.]

**WAC 390-37-105 Prehearing conference—Rule. (1)**

In any prehearing conference prior to an enforcement hearing (adjudicative proceeding), the chair or the chair's designee upon his/her own motion or upon request by one of the parties or their qualified representative, may direct the parties to appear at a specified time and place for a conference to consider:

(a) Identifying and simplifying issues;

(b) The necessity of amendments to the hearing notice;

(c) The possibility of obtaining stipulations, admissions of facts and of documents;

(d) Limiting the number of witnesses; and

(e) Procedural and such other matters as may aid in the conduct of the proceeding.

(2) Prehearing conferences may be presided over by the chair or his/her designee.

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

(4) In a prehearing conference, the presiding officer may hear prehearing motions regarding preliminary matters such as motions *in limine*, discovery motions, and other similar matters. The presiding officer shall not consider dispositive

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motions in a prehearing conference and such motions will automatically be scheduled for consideration before the commission.

(5) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken and decisions made at the conference and the date on which objections to the order are to be filed and served. If no objection to the order is timely filed with the presiding officer, the order shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

(6) When the chair or his/her designee presides over a prehearing conference, he or she is acting as a quasi-judicial body which relates to a quasi-judicial matter between named parties. Therefore, a prehearing conference is not subject to chapter 42.30 RCW, Open Public Meetings Act.

[Statutory Authority: RCW 42.17.370, 03-22-065, § 390-37-105, filed 11/4/03, effective 12/5/03. Statutory Authority: RCW 42.17.390, 94-05-010, § 390-37-105, filed 2/3/94, effective 3/6/94. Statutory Authority: RCW 42.17.370, 91-16-072, § 390-37-105, filed 8/2/91, effective 9/2/91.]

**WAC 390-37-120 Enforcement hearings (adjudicative proceedings)—Subpoenas—Discovery—Hearings.**

(1) The commission, or presiding officer, may issue subpoenas for discovery, subpoenas to persons to appear and give testimony, and may require the production of any books, papers, correspondence, memorandums, or other records deemed relevant or material and the commission or presiding officer may issue protective orders as a part of an enforcement hearing. The agency or its legal representative may issue subpoenas as may the attorney of the party against whom action is being taken. Upon request of the commission or presiding officer, all subpoenas must be filed with the commission, together with proof of proper service. Such subpoenas will issue and may be enforced in the form and manner set forth in RCW 34.05.446 and WAC 10-08-120(4). The subpoena may be personally delivered or sent by certified mail, return receipt requested.

(2) The commission, or presiding officer, upon motion or 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 42.17.370, 03-22-065, § 390-37-120, filed 11/4/03, effective 12/5/03; 91-16-072, § 390-37-120, filed 8/2/91, effective 9/2/91.]

**WAC 390-37-130 Enforcement hearings (adjudicative proceedings)—Depositions and interrogatories—Right to take.**

Unless otherwise provided, any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for use as evidence in the hearing. The deposition of a commissioner, the executive director, or assistant director, may only be

taken upon application to the commission, for good cause shown, and only in those circumstances where the statements or depositions of other staff members would not reveal the information, evidence, or details needed by the party for the case. The attendance of witnesses to a deposition may be compelled by use of a subpoena. Depositions shall be taken only in accordance with this rule and the rules on subpoenas.

[Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-130, filed 11/4/03, effective 12/5/03; 91-16-072, § 390-37-130, filed 8/2/91, effective 9/2/91.]

**WAC 390-37-132 Enforcement hearings (adjudicative proceedings)—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 seven calendar days in writing to the commission 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 commission or its hearing 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 42.17.370. 03-22-065, § 390-37-132, filed 11/4/03, effective 12/5/03; 91-16-072, § 390-37-132, filed 8/2/91, effective 9/2/91.]

**WAC 390-37-134 Depositions and interrogatories in enforcement hearings (adjudicative proceedings)—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 commission or the presiding officer in a prehearing conference may make an 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 commission 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 commission or the presiding officer in a prehearing conference may order the officer 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 agency. 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 42.17.370. 03-18-003, § 390-37-134, filed 8/20/03, effective 9/20/03; 91-16-072, § 390-37-134, filed 8/2/91, effective 9/2/91.]

**WAC 390-37-136 Production of documents and use at hearing and other hearing procedures (adjudicative proceedings).** (1) Unless a prehearing order states otherwise, the provisions of this rule apply to evidence and written argument (legal briefs) filed and served in hearings (adjudicative proceedings). Parties or the executive director may request a prehearing conference if provisions of this rule need to be adjusted or if the provisions are not adhered to by the parties.

(2) The parties are encouraged to exchange copies of proposed exhibits, exhibit lists and witness lists prior to the deadline specified in subsection (3)(a) of this section. The parties are encouraged to exchange documents by e-mail. The parties are encouraged to confer and determine whether there are any objections to the evidence and whether any agreements or stipulations can be reached regarding proposed exhibits, witnesses, and legal and factual issues.

(3)(a) Unless the commission determines otherwise, when evidence is to be offered at the adjudicative proceeding or when briefs are to be submitted at the adjudicative proceeding, the party offering the evidence or brief shall file with the commission and serve on all parties a copy of proposed exhibits, exhibit lists, witness lists, and briefs with the commission via an e-mail to the executive director or his or her designee by the date and time designated by the executive director or designee, which is typically by 1:00 p.m. Pacific Time at least eight calendar days prior to the hearing. The e-mail shall provide the name of the party submitting the documents, the total number of pages, the software used to prepare the document, and the name, address, telephone number and e-mail address of the person sending the e-mail message.

(b) In the event electronic submission is not readily available to a *pro se* respondent or the evidence is not suited to e-mail transmission, other means of providing these materials to the commission may be approved by the chair or the executive director, or their designees if requested in advance of the date and time in (a) of this subsection.

(c) On the day the parties provide these materials electronically to the commission, they shall also mail or otherwise deliver a paper (or hard copy) set of the materials to the commission.

(d) The parties shall confirm in advance with the executive director that any documents provided electronically are able to be accessed by software available at the agency. If they are not accessible, the executive director shall direct how the documents are to be submitted.

(e) The documents are considered filed when received during actual business hours at the commission office. If received after actual business hours, they will be deemed filed the next business day.

(4) Respondent's exhibits shall be numbered R-1, R-2, etc. Commission staff exhibits shall be numbered S-1, S-2, etc. Jointly submitted exhibits shall be numbered J-1, J-2, etc. If an exhibit is not jointly submitted but there is no objection to it by the responding party, the party offering the exhibit shall designate agreed-to exhibits on the party's exhibit list.

(5) Briefs shall contain the name of the respondent in the caption and the cause number. Briefs shall be no more than twenty-five pages, double-spaced, excluding attachments or exhibits.

(6) The parties shall inform the executive director of any special equipment necessary for the adjudicative proceeding at the time documents are filed with the commission.

[Statutory Authority: RCW 42.17.370 and 42.17.690. 06-07-001, § 390-37-136, filed 3/1/06, effective 4/1/06. Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-136, filed 11/4/03, effective 12/5/03; 91-16-072, § 390-37-136, filed 8/2/91, effective 9/2/91.]

**WAC 390-37-140 Brief enforcement hearings (adjudicative proceedings)—Authority.** (1) The commission may provide a brief adjudicative proceeding for violations of the sections of chapter 42.17A RCW that it enforces in which the facts are undisputed, the violations appear to be relatively minor in nature, and a penalty no greater than \$500 will be assessed for the violations. Typical matters to be heard in a brief adjudicative proceeding include, but are not limited to, the following:

- (a) Failure to file or late filing of required reports,
- (b) Failure to report or accurately report campaign contributions or expenditures or funds spent in lobbying,
- (c) Use of public office facilities in election campaigns when the value of public funds expended was minimal,
- (d) Infractions of political advertising law regarding sponsor identification or political party identification.

(2) The commission may utilize a penalty schedule for brief adjudicative proceedings.

(3) Brief adjudicative proceedings are set forth in RCW 34.05.482 through 34.05.494.

[Statutory Authority: RCW 42.17A.110. 12-03-002, § 390-37-140, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-140, filed 11/4/03, effective 12/5/03; 93-15-004, § 390-37-140, filed 7/7/93, effective 8/7/93; 91-16-072, § 390-37-140, filed 8/2/91, effective 9/2/91.]

**WAC 390-37-142 Brief enforcement hearing (adjudicative proceeding)—Procedure.** (1) A brief adjudicative proceeding may be presided over by the chair, or a member of the commission designated by the chair.

(2) When a violation, as described in WAC 390-37-140, is alleged, before taking action, the executive director shall send the alleged violator notice, which shall include:

- (a) Alleged violation;
- (b) The maximum amount of the penalty that can be imposed at the hearing, relevant penalty schedules, and the amount of any proposed fine; and
- (c) Person's right to respond 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 are of such magnitude as to merit penalties greater than \$500, the presiding officer shall immediately adjourn the hearing and direct the matter be scheduled for an adjudicative proceeding by the full commission.

(4) At the time any unfavorable action is taken, within ten business days the presiding officer shall serve upon each party a written statement describing the violation, the reasons for the decision, the penalty imposed, and their right to request review by the commission. The executive director is authorized to sign the decision on behalf of the presiding officer.

(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.

(8/24/12)

[Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-142, filed 11/4/03, effective 12/5/03. Statutory Authority: RCW 42.17.390. 94-05-010, § 390-37-142, filed 2/3/94, effective 3/6/94. Statutory Authority: RCW 42.17.370. 93-15-004, § 390-37-142, filed 7/7/93, effective 8/7/93; 91-16-072, § 390-37-142, filed 8/2/91, effective 9/2/91.]

**WAC 390-37-144 Brief adjudicative proceeding—Administrative review procedures.** (1) The commission shall conduct a review of the initial order upon the written or oral request of a party if the commission receives the request within twenty-one business days after the service of the initial order. "Service" is defined as the date the order was deposited in the U.S. mail per RCW 34.05.010(19), or personally served. The party seeking review shall state the reason for the review, and identify what alleged errors are contained in the initial order.

(2) If the parties have not requested review, the commission 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 reconsideration and judicial review are available. The order on review shall be entered within twenty business days after the date of the initial order or of the request for review, whichever is later.

(4) If the commission is not scheduled to meet within twenty business days after the date of the initial order or request for review and therefore cannot dispose of the request within that time period, the request is:

(a) Deemed denied under RCW 34.05.491(5) and the initial order becomes final;

(b) Considered a request for reconsideration under WAC 390-37-150; and

(c) Scheduled for consideration and disposition at the next commission meeting at which it is practicable to do so.

[Statutory Authority: RCW 42.17.370. 03-22-065, § 390-37-144, filed 11/4/03, effective 12/5/03; 91-16-072, § 390-37-144, filed 8/2/91, effective 9/2/91.]

**WAC 390-37-150 Reconsideration and judicial review of decisions.** (1) For purposes of this rule, "decision" means any findings, conclusions, order, or other action by the commission which is reviewable by a court.

(2) A decision may be reconsidered only upon (a) the written request of a party thereby or (b) the motion or written request of a commissioner who voted on the prevailing side when that decision was made.

(3) Such a request for reconsideration shall be filed at the office of the public disclosure commission, or motion made, no later than twenty-one business days after service of the decision of which reconsideration is sought. Copies of the request or motion shall be served on all parties of record at the time the request for reconsideration or motion is filed.

(4) A request or motion for reconsideration shall specify the grounds therefor. Grounds for reconsideration shall be limited to:

(a) A request for review was deemed denied in accordance with WAC 390-37-144(4);

(b) New facts or legal authorities that could not have been brought to the commission's attention with reasonable diligence. If errors of fact are alleged, the requester must identify the specific evidence in the prior proceeding on which the requester is relying. If errors of law are alleged, the requester must identify the specific citation; or

(c) Significant typographical or ministerial errors in the order.

(5) Upon being served with a decision, the respondent may treat that decision as final for the purpose of petitioning for judicial review. The commission may not reconsider any decision after being served with a petition for judicial review.

(6) When a request for reconsideration is served, or motion made, enforcement of the decision of which reconsideration is sought shall be stayed and the decision shall not be final until the commission has acted on the reconsideration.

(7) The commission is deemed to have denied request for reconsideration or motion if, within twenty business days from the date the request or motion is filed, the commission

does not either (a) dispose of the request or motion, or (b) serve the parties with written notice specifying the date it will act upon the request or motion.

(8) The commission shall act on the reconsideration request or motion, at the next meeting at which it practicably may do so, by:

(a) Deciding whether to reconsider its decision; and

(b) If it decides to do so, either:

(i) Affirming its decision; or

(ii) Withdrawing or modifying the final order; or

(iii) Setting the matter for further hearing.

Provided, That before a decision may be amended other than by lowering a penalty, the respondent shall be given notice and an opportunity to be heard if, and in the same manner as, required for the original decision.

[Statutory Authority: RCW 42.17.370, 03-22-065, § 390-37-150, filed 11/4/03, effective 12/5/03; 91-16-072, § 390-37-150, filed 8/2/91, effective 9/2/91. Statutory Authority: RCW 42.17.370(1), 79-08-046 (Order 79-03), § 390-37-150, filed 7/19/79.]

#### **WAC 390-37-155 Electronic filing brief enforcement hearing penalty schedule.**

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to electronically file by date required.	\$250	\$350	\$500	Full commission consideration

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes five hundred dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to five hundred dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

[Statutory Authority: RCW 42.17.370, 03-22-065, § 390-37-155, filed 11/4/03, effective 12/5/03.]

#### **WAC 390-37-160 Statement of financial affairs (F-1) penalty schedule.**

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file report by date of enforcement hearing.	\$150	\$300	\$500	Full commission consideration
Filed report after hearing notice but before enforcement hearing.				Full commission consideration
Did not pay settlement amount.	\$100	\$200	\$400	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$0 - \$100	\$100 - \$200	\$200 - \$400	Full commission consideration

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes five hundred dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may

impose a penalty not to exceed the amount of the outstanding penalty, up to five hundred dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commission for an enforcement action when the person:

(a) Was found in violation during a previous reporting period,

(b) The violation remains in effect following any appeals, and

(c) The person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

[Statutory Authority: RCW 42.17.370. 05-04-038, § 390-37-160, filed 1/27/05, effective 2/27/05; 03-22-065, § 390-37-160, filed 11/4/03, effective 12/5/03.]

**WAC 390-37-165 Candidate registration statement (C-1)/candidate statement of financial affairs (F-1) penalty schedule.**

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file F-1 and/or C-1 by date of enforcement hearing.	\$150 per report	\$300 per report, up to \$500	Full commission consideration	Full commission consideration
Filed reports after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$100 per report	\$200 per report	\$400	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$0 - \$100 per report	\$100 - \$200 per report	\$200 - \$400	Full commission consideration

**Provisos:**

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes five hundred dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to five hundred dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider

if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commission for an enforcement action when the person:

(a) Was found in violation during a previous reporting period,

(b) The violation remains in effect following any appeals, and

(c) The person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

[Statutory Authority: RCW 42.17.370. 05-04-038, § 390-37-165, filed 1/27/05, effective 2/27/05; 03-22-065, § 390-37-165, filed 11/4/03, effective 12/5/03.]

**WAC 390-37-170 Lobbyist monthly expense report (L-2) penalty schedule.**

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file report by date of enforcement hearing.	\$150	\$300	\$500	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$100	\$200	\$400	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$0 - \$100	\$100 - \$200	\$200 - \$400	Full commission consideration

## Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer. Except in rare circumstances, the non-suspended portion of the penalty will not be less than the original settlement offer.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes five hundred dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may

impose a penalty not to exceed the amount of the outstanding penalty, up to five hundred dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commission for an enforcement action when the person:

(a) Was found in violation during a previous reporting period,

(b) The violation remains in effect following any appeals, and

(c) The person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

[Statutory Authority: RCW 42.17.370, 05-04-038, § 390-37-170, filed 1/27/05, effective 2/27/05; 03-22-065, § 390-37-170, filed 11/4/03, effective 12/5/03.]

**WAC 390-37-175 Lobbyist employer report (L-3) penalty schedule.**

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file report by date of enforcement hearing.	\$150	\$300	\$500	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$100	\$200	\$400	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$0 - \$100	\$100 - \$200	\$200 - \$400	Full commission consideration

## Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes five hundred dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to five hundred dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commission for an enforcement action when the person:

(a) Was found in violation during a previous reporting period,

(b) The violation remains in effect following any appeals, and

(c) The person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

[Statutory Authority: RCW 42.17.370, 05-04-038, § 390-37-175, filed 1/27/05, effective 2/27/05; 03-22-065, § 390-37-175, filed 11/4/03, effective 12/5/03.]

