

# Chapter 391-08 WAC

## RULES OF PRACTICE AND PROCEDURE—PUBLIC EMPLOYMENT RELATIONS COMMISSION

### WAC

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031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

Service of process—Opportunity for hearing. [Order 77-1, § 391-08-160, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150.

Service of process—Notice of hearing. [Order 77-1, § 391-08-170, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

Definition of issues—Before hearing. [Order 77-1, § 391-08-200, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.

Definition of issues—Prehearing conference. [Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-210, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-210, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150.

Definition of issues—Record of action taken during prehearing conference. [Order 77-1, § 391-08-220, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

Summary judgment. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 98-14-112, § 391-08-230, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. WSR 90-06-070, § 391-08-230, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 81-02-034 (Order 81-01), § 391-08-230, filed 1/6/81.] Repealed by WSR 00-14-048, filed 6/30/00, effective 8/1/00. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050.

Subpoenas—Service. [Order 77-1, § 391-08-320, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

Subpoenas—Fees. [Order 77-1, § 391-08-330, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

Subpoenas—Proof of service. [Order 77-1, § 391-08-340, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

Subpoenas—Quashing. [Order 77-1, § 391-08-350, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

Subpoenas—Enforcement. [Order 77-1, § 391-08-360, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-

### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

391-08-103	Service of process—Additional time after service by mail. [Order 77-1, § 391-08-103, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
391-08-105	Service of process—Extension of time. [Order 77-1, § 391-08-105, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
391-08-110	Service of process—By whom served. [Order 77-1, § 391-08-110, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.
391-08-130	Service of process—Method of service. [Order 77-1, § 391-08-130, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
391-08-140	Service of process—Completion of service on parties. [Order 77-1, § 391-08-140, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
391-08-150	Service of process—Filing with agency. [Order 77-1, § 391-08-150, filed 1/27/77.] Repealed by WSR 83-24-

- 01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-370 Subpoenas—Geographical scope. [Order 77-1, § 391-08-370, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-400 Evidence—Examination of witnesses. [Order 77-1, § 391-08-400, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-410 Evidence—Application of rules of evidence. [Order 77-1, § 391-08-410, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-420 Evidence—Objections and rulings. [Order 77-1, § 391-08-420, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-450 Evidence—Stipulations and admissions of record. [Order 77-1, § 391-08-450, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-460 Evidence—Submission of documentary evidence. [Order 77-1, § 391-08-460, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-470 Evidence—Excerpts from documentary evidence. [Order 77-1, § 391-08-470, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-490 Evidence—Refusal of witness to answer. [Order 77-1, § 391-08-490, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-500 Declaratory rulings authorized. [Order 77-1, § 391-08-500, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.
- 391-08-510 Declaratory rulings—Petition. [Order 77-1, § 391-08-510, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.
- 391-08-600 Agency decisions—Form and content. [Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-600, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-600, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 35.05.461 [34.05.461], 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150.
- 391-08-900 Petitions for rule making—Who may petition. [Order 77-1, § 391-08-900, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 34.05, 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.
- 391-08-910 Petitions for rule making—Form. [Order 77-1, § 391-08-910, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 34.05, 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.
- 391-08-920 Petitions for rule making—Agency must consider. [Order 77-1, § 391-08-920, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 34.05, 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.
- 391-08-930 Petitions for rule making—Notice of disposition. [Order 77-1, § 391-08-930, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory

Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 34.05, 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.

**Reviser's note:** Chapter 15, Laws of 1983 recreates the marine employees' commission, Title 316 WAC, and transfers the authority for the administration of chapter 47.64 RCW to that agency. Title 391 WAC will reflect some of the changes resulting from this statutory revision.

**WAC 391-08-001 Application and scope of chapter 391-08 WAC.** Chapter 391-08 WAC has been added to the Washington Administrative Code by the public employment relations commission pursuant to the authority of section 12, chapter 288, Laws of 1975 1st ex. sess. (RCW 41.59.110); sections 7, 14 and 20, chapter 296, Laws of 1975 1st ex. sess. (RCW 41.58.050, 28B.52.080 and 41.56.090, respectively); and section 232, chapter 354, Laws of 2002 (RCW 41.06.340); section 15, chapter 356, Laws of 2002 (RCW 41.76.060); section 7, chapter 6, Laws of 2010 (RCW 49.39.060); and section 16, chapter 16 (2ESSB 5742), Laws of 2011 1st sp. sess., to promulgate comprehensive and uniform rules for practice and procedure before the agency. This chapter sets forth general rules applicable to all types of proceedings before the agency, and should be read in conjunction with the provisions of:

(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapters 391-25, 391-35, 391-45 and 391-95 WAC, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-25-070, 391-25-090, 391-35-050, 391-45-050, and 391-95-110;

(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-083, which is replaced by detailed requirements in WAC 391-08-010;

(d) WAC 10-08-110, which is replaced by detailed requirements in WAC 391-08-120;

(e) WAC 10-08-120, which is replaced by detailed requirements in WAC 391-08-040, 391-08-300 and 391-08-310;

(f) WAC 10-08-140, which is limited by WAC 391-08-040, 391-08-300 and 391-08-310;

(g) WAC 10-08-150, which is limited by WAC 391-08-315;

(h) WAC 10-08-211, which is replaced by WAC 391-08-640 and detailed requirements in WAC 391-25-390, 391-25-391, 391-25-590, 391-25-630, 391-25-650, 391-25-660, 391-25-670, 391-35-210, 391-35-250, 391-45-350, 391-45-390, 391-95-270, and 391-95-290;

(i) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-25-150, 391-25-220, 391-25-230, 391-25-250, 391-25-270, 391-35-070, 391-35-080, 391-45-070, 391-45-090, 391-45-260, and 391-95-170; and

(j) WAC 10-08-250, 10-08-251, and 10-08-252 which are replaced by detailed requirements in WAC 391-08-520.

(2) Chapter 391-25 WAC, which regulates representation proceedings.

(3) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.

(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.

(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.

(6) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.

(7) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.

In the event of a conflict between a general rule in this chapter and a special rule in another chapter applicable to a particular proceeding, the special rule shall govern.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-001, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, and 49.39.060. WSR 10-20-172, § 391-08-001, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-08-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-08-001, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-08-001, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-08-001, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-08-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-001, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-045 (Order 80-4), § 391-08-001, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-001, filed 1/27/77.]

#### **WAC 391-08-003 Policy—Construction—Waiver.**

The policy of the state being primarily to promote peace in labor relations, these rules and all other rules adopted by the agency shall be liberally construed to effectuate the purposes and provisions of the statutes administered by the agency, and nothing in any rule shall be construed to prevent the commission and its authorized agents from using their best efforts to adjust any labor dispute. The commission and its authorized agents may waive any requirement of the rules unless a party shows that it would be prejudiced by such a waiver.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.58.005(1). WSR 90-06-070, § 391-08-003, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-003, filed 1/27/77.]

**WAC 391-08-007 Definitions.** As used in Title 391 WAC:

(1) "Agency" means the public employment relations commission, its officers and agents;

(2) "Commission" means the public employment relations commission;

(3) "Executive director" means the officer of that title appointed by the commission pursuant to RCW 41.58.015(2);

(4) "Labor dispute" means any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(5) "Marine employees' commission" means the marine employees' commission appointed under section 16, chapter 16 (2ESSB 5742), Laws of 2011 1st sp. sess.

(2/15/12)

(6) "Presiding officer" means an agency official(s), examiner, hearing officer or other person authorized to act on behalf of the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-007, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-007, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-007, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-045 (Order 80-4), § 391-08-007, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-007, filed 1/27/77.]

**WAC 391-08-010 Appearance and practice before agency—Who may appear—Notice of appearance.** (1) No person may appear in a representative capacity before the agency other than the following:

(a) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington;

(b) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law;

(c) A bona fide officer, employee or other authorized representative of: (i) Any employer subject to the jurisdiction of the agency, (ii) any labor or employee organization, or (iii) individual.

(2) Except where the information is already listed in the agency's docket records for the particular case, a person appearing in a representative capacity shall file and serve a notice of appearance listing the representative's name, address, telephone number, fax number, and e-mail address.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-08-010, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 00-14-048, § 391-08-010, filed 6/30/00, effective 8/1/00. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-010, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-010, filed 1/27/77.]

**WAC 391-08-020 Appearance and practice before agency—Standards of conduct.** Misconduct at any hearing conducted by the commission or a member of its staff shall be ground for summary exclusion from the hearing. Misconduct of an aggravated character, when engaged in by an attorney or other person acting in a representative capacity pursuant to WAC 391-08-010, shall be ground for suspension or disbarment by the commission after due notice and hearing.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-020, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-020, filed 1/27/77.]

**WAC 391-08-030 Appearance and practice before agency—Appearance by former employee of agency or former member of attorney general's staff.** No former member of the commission, former employee of the agency or former member of the attorney general's staff assigned to represent the agency shall, at any time after severing his or

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her employment with the agency or with the attorney general, appear in a representative capacity on behalf of any party in connection with any case or proceeding which was pending before the agency during the time of his or her employment with the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 96-07-105, § 391-08-030, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-030, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-030, filed 1/27/77.]

**WAC 391-08-040 Appearance and practice before agency—Former employee as witness.** Except upon the express written consent of the commission, no former member of the commission, former employee of the agency or former member of the attorney general's staff assigned to represent the agency shall, at any time after severing his or her employment with the agency or with the attorney general, appear as a witness on behalf of any party in connection with any case or proceeding which was pending before the agency during the time of his or her employment with the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 96-07-105, § 391-08-040, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-040, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-040, filed 1/27/77.]

**WAC 391-08-100 Computation of time.** In computing any period of time prescribed or allowed by any applicable statute or rule, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 98-14-112, § 391-08-100, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-100, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-100, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-100, filed 1/27/77.]

### **WAC 391-08-120 Filing and service of papers.**

#### **FILING OF PAPERS WITH THE AGENCY**

(1) Papers to be filed with the agency shall be filed at the commission's Olympia office. The executive director shall post, and from time to time revise as appropriate, a list containing the street and mailing addresses for filing by actual delivery of papers, the telephone number for filing by electronic telefacsimile transmission (fax), and the electronic mail (e-mail) address and software supported by the agency for filing by e-mail attachment.

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(2) Papers may be filed by any of the following methods:

(a) FILING BY ACTUAL DELIVERY of papers to the agency (including filings delivered by United States mail) shall be subject to the following limitations:

(i) Only the original paper(s) shall be filed. No additional copies of papers are required.

(ii) The case number(s) shall be indicated on the front page of each document filed, except for petitions and complaints being filed to initiate proceedings before the agency.

(iii) Filing shall occur only upon actual receipt of the original paper by the agency during office hours.

(iv) Papers delivered to or left at the agency office after the close of business will be deemed to be filed on the next business day the office is open.

(b) FILING BY FAX shall be subject to the following limitations:

(i) Parties shall only transmit one copy of the paper, accompanied by a cover sheet or form identifying the party filing the paper, the total number of pages in the fax transmission, and the name, address, telephone number and fax number of the person sending the fax.

(ii) The original paper filed by fax shall be mailed to the commission's Olympia office on the same day the fax is transmitted.

(iii) The case number(s) shall be indicated on the front page of each document filed by fax, except for petitions and complaints being filed to initiate proceedings before the agency.

(iv) Filing by fax shall occur only when a complete legible copy of the paper is received by the agency. If a fax is not received in legible form, it will be treated as if it had never been filed. A party attempting to file a paper by fax bears the risk that the paper will not be timely or legibly received, regardless of the cause.

(v) If receipt of a fax transmission commences after office hours, the paper will be deemed filed on the next business day the office is open.

(vi) Fax shall not be used to submit or revoke authorization cards for purposes of a showing of interest or cross-check under chapter 391-25 WAC.

(c) FILING BY E-MAIL ATTACHMENT shall be subject to the following limitations:

(i) Parties shall only transmit one copy of the paper, as an attachment to an e-mail message identifying the party filing the paper, the total number of pages in the attachment, the software used to prepare the attachment, and the name, address, telephone number and e-mail address of the person sending the e-mail message.

(ii) The original paper filed by e-mail attachment shall be mailed to the commission's Olympia office on the same day the e-mail message and attachment are transmitted.

(iii) The case number(s) shall be indicated on the front page of each document filed by e-mail attachment, except for petitions and complaints being filed to initiate proceedings before the agency.

(iv) Filing by e-mail attachment shall occur only when a complete legible copy of the paper is received by the agency. If an e-mail attachment is not received in legible form, or cannot be opened with software on the list promulgated by the executive director under this section, it will be treated as if it had never been filed. A party attempting to file a paper by e-

mail attachment bears the risk that the paper will not be timely or legibly received, regardless of the cause.

(v) If an e-mail transmission is received by the agency after office hours, the paper will be deemed filed on the next business day the office is open.

(vi) E-mail shall not be used to submit or revoke authorization cards for purposes of a showing of interest or cross-check under chapter 391-25 WAC.

#### SERVICE ON OTHER PARTIES

(3) A party which files any papers with the agency shall serve a copy of the papers upon all counsel and representatives of record and upon unrepresented parties or upon their agents designated by them or by law. Service shall be completed no later than the day of filing, by one of the following methods:

(a) Service may be made personally, and shall be regarded as completed when delivered in the manner provided in RCW 4.28.080;

(b) Service may be made by first class, registered, or certified mail, and shall be regarded as completed upon deposit in the United States mail properly stamped and addressed.

(c) Service may be made by commercial parcel delivery company, and shall be regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(d) Service may be made by fax, and shall be regarded as completed upon production by the fax machine of confirmation of transmission, together with same day mailing of a copy of the papers, postage prepaid and properly addressed, to the person being served.

(e) Service may be made by e-mail attachment, and shall be regarded as completed upon transmission, together with same day mailing of a copy of the papers, postage prepaid and properly addressed, to the person being served.

#### PROOF OF SERVICE

(4) On the same day that service of any papers is completed under subsection (3) of this section, the person who completed the service shall:

(a) Obtain an acknowledgment of service from the person who accepted personal service; or

(b) Make a certificate stating that the person signing the certificate personally served the papers by delivering a copy at a date, time and place specified in the certificate to a person named in the certificate; or

(c) Make a certificate stating that the person signing the certificate completed service of the papers by:

(i) Mailing a copy under subsection (3)(b) of this section; or

(ii) Depositing a copy under subsection (3)(c) of this section with a commercial parcel delivery company named in the certificate; or

(iii) Transmitting and mailing a copy under subsection (3)(d) or (e) of this section.

(5) Where the sufficiency of service is contested, an acknowledgment of service obtained under subsection (4)(a) of this section or a certificate of service made under subsection (4)(b) or (c) of this section shall constitute proof of service.

(2/15/12)

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.010 (6) and (19). WSR 00-14-048, § 391-08-120, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-08-120, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.010 (6) and (18). WSR 96-07-105, § 391-08-120, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-120, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-053 (Order 88-01), § 391-08-120, filed 5/31/88. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-120, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-120, filed 1/27/77.]

**WAC 391-08-180 Continuances.** (1) Postponements, continuances, extensions of time, and adjournments may be ordered by the presiding officer on his or her own motion or may be granted on timely request of any party, with notice to all other parties, if the party shows good cause.

(2) A request for a continuance may be oral or written. The party seeking the continuance shall notify all other parties of the request. The request for a continuance shall state whether or not all other parties agree to the continuance.

If all parties do not agree to the continuance, the presiding officer shall promptly schedule a prehearing conference to receive argument and to rule on the request.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 00-14-048, § 391-08-180, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-08-180, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-08-180, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-180, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-180, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-045 (Order 80-4), § 391-08-180, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-180, filed 1/27/77.]

**WAC 391-08-190 Prefiling of collective bargaining agreements.** The agency shall make available a procedure for parties to proceedings before the agency to prefile collective bargaining agreements with the agency in accordance with this section, and to thereafter incorporate prefiled contracts into other filings, by reference. The prefiled copy will then take the place of filing copies otherwise required by rules in Title 391 WAC.

(1) An employer and/or exclusive bargaining representative who request prefiling of their collective bargaining agreement under this section may file a written request with the agency.

(a) The requesting party or parties shall use the form prescribed by the executive director.

(b) The requesting party or parties shall attach or enclose a complete electronic copy of the collective bargaining agreement (in Adobe Acrobat, WordPerfect, or Microsoft Word format).

(c) The requesting party or parties shall attach photocopies of certain pages of the original collective bargaining agreement, as follows:

(i) The front cover or first page(s) showing the names of the parties and the identification of the bargaining unit(s) covered;

(ii) The page(s) containing the effective date and termination dates of the collective bargaining agreement; and

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(iii) The page(s) containing the signatures of the parties' representatives.

(2) Upon the filing of a request conforming to subsection (1) of this section, the agency shall put the prefiled collective bargaining agreement into an electronic data base.

(a) The collective bargaining agreements contained in the electronic data base shall be open to public inspection and copying.

(b) The agency shall issue the parties a confirmation code unique to that collective bargaining agreement.

(3) After issuance of a confirmation code under subsection (2)(b) of this section, the parties are authorized to incorporate that prefiled collective bargaining agreement into any paper subsequently filed with the agency under Title 391 WAC, by referring to the confirmation code in the subsequent document.

(4) The authorization in subsection (3) of this section shall terminate on the expiration date originally stated in the prefiled collective bargaining agreement.

(5) Any amendments to the original agreement may be filed and incorporated into the original filing under subsection (1) of this section. If either party declines to profile an amendment to a collective bargaining agreement under this rule, a copy of any amendment must be included in any subsequent case filed with the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-08-190, filed 1/31/08, effective 4/1/08.]

**WAC 391-08-300 Subpoenas—Discovery.** The power of subpoena shall be limited to compelling the testimony of witnesses and production of documents or other tangible evidence at hearings conducted by the agency.

Pursuant to the authority delegated to the agency by RCW 34.05.446(2), other forms of discovery shall not be available in proceedings before the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.446. WSR 98-14-112, § 391-08-300, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. WSR 90-06-070, § 391-08-300, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-300, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-300, filed 1/27/77.]

**WAC 391-08-310 Subpoenas—Form—Issuance to parties.** (1) Every subpoena shall:

(a) State the name of the agency as: State of Washington, public employment relations commission;

(b) State the title of the proceeding and case number; and

(c) Identify the party causing issuance of the subpoena.

(2) Every subpoena shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control at the time and place set for the hearing, except no subpoena shall be issued or given effect to require the attendance and testimony of, or the production of evidence by, any member of the commission or any member of the agency staff in any proceeding before the agency.

(3) Subpoenas may be issued by the commission or its presiding officer:

(a) On the request of counsel or other representative authorized to practice before the agency; or

(b) On the request of a party not represented by counsel or other representative authorized to practice before the agency, but may then be conditioned upon a showing of general relevance and reasonable scope of the testimony or evidence sought.

(4) Subpoenas may be issued by attorneys under the authority conferred upon them by RCW 34.05.446(1).

(5) A subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy of the subpoena, or by leaving a copy of the subpoena at the place of his or her abode. When service is made by any person other than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.

(6) The party which issues or requests issuance of a subpoena shall pay the fees and allowances and the cost of producing records required to be produced by subpoena.

(a) Witness fees, mileage, and allowances for meals and lodging shall be at the rates and terms allowed by the superior court for Thurston County.

(b) Witnesses shall be entitled to payment in advance for their fees for one day's attendance, together with mileage for traveling to and returning from the place where they are required to attend, if their demand for payment is made to the officer or person serving the subpoena at the time of service.

(7) The presiding officer, upon motion made at or before the time specified in the subpoena for compliance therewith, may:

(a) Quash or modify the subpoena if it is unreasonable or 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.

(8) Subpoenas shall be enforced as provided in RCW 34.05.588(1).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 2.40.010, 5.56.010 and 34.05.446. WSR 00-14-048, § 391-08-310, filed 6/30/00, effective 8/1/00; WSR 99-14-060, § 391-08-310, filed 7/1/99, effective 8/1/99; WSR 98-14-112, § 391-08-310, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. WSR 90-06-070, § 391-08-310, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-310, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-310, filed 1/27/77.]

**WAC 391-08-315 Interpreters.** (1) For all adjudicative proceedings under the Administrative Procedure Act (cases under chapters 391-25, 391-35, 391-45 and 391-95 WAC), the provisions of WAC 10-08-150 as now or hereafter amended shall apply.

(2) For all cases that are not adjudicative proceedings under the Administrative Procedure Act (cases under chapters 391-55 and 391-65 WAC), the provisions of WAC 10-08-150 as now or hereafter amended shall apply, except that all interpreter fees and expenses shall be paid by the party which requests the participation of an impaired person as

defined in chapter 2.42 RCW or a non-English-speaking person as defined in chapter 2.43 RCW.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 2.42.120 and 2.43.030. WSR 98-14-112, § 391-08-315, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100, 41.59.150 and chapter 2.42 RCW. WSR 90-06-070, § 391-08-315, filed 3/7/90, effective 4/7/90.]

**WAC 391-08-520 Declaratory orders.** Any person may petition the commission for a declaratory order, under RCW 34.05.240, with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the commission. For purposes of this section, the term person includes natural persons, employee organizations, and employers.

(1) A petition for a declaratory order shall generally adhere to the following form:

(a) At the top of the page shall appear the wording "Before the Public Employment Relations Commission," a caption setting out "In the Matter of the Petition of (name of petitioner to be inserted) for a Declaratory Order," and the title "Petition."

(b) The body of the petition shall set out, in numbered paragraphs:

(i) The name and address of the petitioner and the name and address, if any, of the representative appearing on behalf of the petitioner.

(ii) The name(s) and address(es) of any other party which the petitioner seeks to have bound by any declaratory order issued by the commission, and the name(s) and address(es) of their representatives, if known.

(iii) The rule(s), order(s) or statute(s) from which the controversy arises.

(iv) The facts which the petitioner wishes the commission to consider in issuing a declaratory order.

(v) The issues which the petitioner wishes the commission to address in its order.

(vi) The relief requested by the petitioner.

(vii) The reasons on which the petitioner relies to show that: Uncertainty necessitating resolution exists; there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion; the uncertainty adversely affects the petitioner; and the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested.

(c) The petition shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on other parties named in the petition as required by WAC 391-08-120 (3) and (4).

(2) Within fifteen days after receipt of a petition for a declaratory order, the executive director or designee shall give notice of the petition to all persons to whom notice is required by law, and may give notice to any other person he or she deems desirable. The notice shall establish a deadline for necessary parties other than the petitioner to file written consent to the determination of the matter by a declaratory order.

(2/15/12)

(3) The petition and any responses from parties shall be forwarded to the commission for consideration. The commission shall not issue a declaratory order if:

(a) The matter is or could have been the subject of any other adjudicative proceeding before the commission; or

(b) A necessary party whose rights would be substantially prejudiced does not consent, in writing, to the determination of the matter by a declaratory order.

(4) The commission may consider the petition without argument and shall, within thirty days after receipt of the petition, do one of the following:

(a) Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances;

(b) Set a reasonable time and place for a hearing to be held within ninety days after receipt of the petition, including submission of evidence by the parties if deemed necessary by the commission, or submission of written argument upon the matter if the material facts are not in dispute. The commission shall give seven days or more advance written notice to the petitioner and other persons who have been given notice of the petition pursuant to subsection (2) of this section of the time, date, and place for the hearing or submission and of the issues it will be considering;

(c) Set a specified time within ninety days after receipt of the petition by which it will enter a declaratory order; or

(d) Decline to enter a declaratory order, stating the reasons for its action.

(5) The commission may extend the time limits of subsection (4)(b) and (c) of this section, for good cause.

(6) The commission may, at any time before taking final action on a petition under this section, request submission of additional facts or argument, including setting the case for oral argument.

(7) If the commission proceeds in the manner provided in subsection (4)(b) of this section, it shall within a reasonable time after conclusion of the proceeding:

(a) Issue a declaratory order; or

(b) Notify the petitioner and any other party to the proceeding that no declaratory order will be issued and state the reasons for such action.

(8) A declaratory order entered by the commission or a decision to decline to enter a declaratory order shall be in writing, and shall be served upon all parties identified in subsection (2) of this section. Each declaratory order shall contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusions.

(9) A declaratory order has the same status as any other order entered in an adjudicative proceeding conducted by the commission.

(10) In the event a declaratory order is filed involving the application of the provisions of chapter 47.64 RCW, the marine employees' commission shall act in place of the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-520, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.240. WSR 98-14-112, § 391-08-520, filed 7/1/98, effective 8/1/98.]

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**WAC 391-08-610 Agency decisions—Service.** Every final order issued by the agency shall be served on each party or upon the agency designated by the party or by law to receive service of such papers; and a copy shall be furnished to any counsel or person appearing for a party in a representative capacity.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. WSR 90-06-070, § 391-08-610, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-610, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-610, filed 1/27/77.]

**WAC 391-08-630 Agency structure—Substitution for executive director.** (1) The public employment relations commission and its staff maintain an impartial role in all proceedings pending before the agency.

(2) The commission consists of three citizen members appointed by the governor with the advice and consent of the senate, pursuant to RCW 41.58.010. Commission members serve on a part-time basis only. All commission members represent the interests of the public. The commission reserves to itself a policy-making and appellate function.

(3) The executive director appointed by the commission pursuant to RCW 41.58.015(2) is the full-time agency head, with authority to act in administrative and personnel matters. Authority is also delegated to the executive director to make substantive decisions in certain types of cases.

(4) The commission's professional staff is appointed pursuant to RCW 41.58.015(3). A "multifunctional" staffing pattern is used, whereby individual members of the commission's professional staff are assigned from time to time to conduct any or all of the types of dispute resolution services provided by the agency. Authority is delegated to members of the professional staff to make decisions as "examiner" under chapters 391-45 and 391-95 WAC. The executive director may also delegate authority to members of the professional staff to make decisions in certain situations under chapters 391-25 and 391-35 WAC.

(5) In the event the executive director is disqualified from participation in a decision, the most senior (in terms of length of service with this agency) dispute resolution manager authorized to act as the designee of the executive director to make preliminary rulings on unfair labor practice cases under WAC 391-45-110, who has not been directly involved in the particular circumstances shall make decisions and rulings otherwise required of the executive director. Thereafter, this authority passes to the other dispute resolution managers in agency seniority order.

(6) The marine employees' commission consists of three citizen members appointed by the governor with the advice and consent of the senate, pursuant to and consistent with section 16, chapter 16 (2ESSB 5742), Laws of 2011 1st sp. sess.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-630, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 41.58.010 and [41.58].-015. WSR 03-03-064, § 391-08-630, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.58.010 and 41.58.015. WSR 98-14-112, § 391-08-630, filed 7/1/98, effective 8/1/98; WSR 90-06-070, § 391-08-630, filed 3/7/90, effective 4/7/90. Statu-

tory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 85-19-059 (Resolution No. 85-01), § 391-08-630, filed 9/16/85.]

**WAC 391-08-640 Adjudicative proceedings—Appeals.** Actions by the executive director and other agency staff members in adjudicative proceedings under the Administrative Procedure Act (cases under chapters 391-25, 391-35, 391-45 and 391-95 WAC) are taken under authority delegated by the commission.

(1) The parties shall have the right to appeal to the commission, as follows:

(a) Under chapter 391-25 WAC, a direction of election or direction of cross-check and other rulings in the proceedings up to the issuance of a tally are interim orders, and may only be appealed to the commission by objections under WAC 391-25-590 after the election or cross-check.

(b) Under chapter 391-25 WAC, an order issued under WAC 391-25-390 or 391-25-510 and any rulings in the proceedings up to the issuance of the order, as well as rulings that the employer or employees are subject to the jurisdiction of the commission, may be appealed to the commission under WAC 391-25-660.

(c) Under chapter 391-35 WAC, an order issued under WAC 391-35-190 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-35-210.

(d) Under chapter 391-45 WAC, an order issued under WAC 391-45-110(1) or 391-45-310 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-45-350.

(e) Under chapter 391-95 WAC, an order issued under WAC 391-95-150(1) or 391-95-250 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-95-270.

(2) For cases decided under chapter 47.64 RCW, the marine employees' commission shall act in place of the commission.

(3) The commission will only consider amicus (friend of the forum) briefs filed in conformity with this subsection.

(a) The person or organization desiring to file an amicus brief must:

(i) Obtain a copy of the decision on appeal, the notice of appeal, and the briefs of the parties;

(ii) Limit any amicus brief to particular issues on appeal;

(iii) Limit any legal analysis to arguments that differ from those advanced by the parties;

(iv) Exclude restatement or reargument of the facts, except as necessary to legal arguments under (a)(iii) of this subsection;

(v) Limit any amicus brief to twenty-five pages in total length (double-spaced, 12-point type); and

(vi) File the amicus brief with the commission within fourteen days following filing and service of the briefs of the parties, and serve copies of any such brief on each of the original parties in the case.

(b) The commission may extend the deadline for a party wishing to file an amicus brief if the petitioning party demonstrates good cause for such extension.



(c) The original parties to the case may, within fourteen days following the filing and service of an amicus brief, file and serve written responses to the amicus brief.

(d) A person or organization that files an amicus brief does not thereby acquire any right to reply to the responses filed by the original parties to the case.

(e) A person or organization that files an amicus brief does not thereby become a party to the case for purposes of any further proceedings or appeal.

(4) The commission may, on its own motion, review any order which is subject to appeal under subsection (1) of this section, by giving written notice to all parties within thirty days following the issuance of the order.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. WSR 12-05-066, § 391-08-640, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-08-640, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.464. WSR 98-14-112, § 391-08-640, filed 7/1/98, effective 8/1/98.]

#### **WAC 391-08-650 Case docketing and numbering.**

The agency maintains a computerized case docketing system which is used to track and manage all requests for the dispute resolution service provided by the agency.

(1) Each case processed by the agency is identified by a unique number consisting of four components.

(a) The first component, consisting of a five-digit number, indicates the sequential number of cases docketed since the agency commenced operations on January 1, 1976.

(b) The second component, consisting of one alphabetic code, indicates the type of dispute being processed, as follows:

"A" indicates a grievance arbitration proceeding under chapter 391-65 WAC, wherein an agency staff member is to interpret or apply an existing collective bargaining agreement.

"C" indicates a unit clarification proceeding under chapter 391-35 WAC.

"D" indicates a declaratory ruling or declaratory order proceeding under the Administrative Procedure Act, and formerly included proceedings under chapter 391-95 WAC concerning assertion of the right of nonassociation by employees subject to union security obligations.

"E" indicates a representation proceeding under chapter 391-25 WAC.

"F" indicates a fact-finding proceeding under chapter 391-55 WAC, to recommend the terms of a collective bargaining agreement.

"G" indicates a grievance mediation proceeding under chapter 391-55 WAC after January 1, 1996, concerning the interpretation or application of an existing collective bargaining agreement.

"I" indicates an interest arbitration proceeding under chapter 391-55 WAC, to establish the terms of a collective bargaining agreement.

"M" indicates a mediation proceeding under chapter 391-55 WAC, limited after January 1, 1996, to disputes concerning the terms of a collective bargaining agreement.

"N" indicates a proceeding under chapter 391-95 WAC after January 1, 1996, concerning assertion of the right of

nonassociation by employees subject to union security obligations.

"P" indicates a request for a list of arbitrators from the commission's dispute resolution panel for grievance arbitration proceedings under chapter 391-65 WAC.

"S" indicates a settlement mediation proceeding for cases under chapters 391-45 and 391-95 WAC.

"U" indicates an unfair labor practice proceeding under chapter 391-45 WAC.

(c) The third component, consisting of a two-digit number, indicates the calendar year in which the case is docketed.

(d) The fourth component, consisting of a five-digit number, indicates the sequential number of the case within the type of dispute identified in the second component, since the agency commenced operations on January 1, 1976.

(2) Cases involving various departments or divisions of an employer entity are docketed under the name of the employer entity.

(3) Cases filed by an employee organization or labor organization are docketed under the name of the organization, even if employees represented by that organization are named individually in the pleadings or are affected by the outcome of the proceedings.

(4) Cases filed by two or more individual employees are docketed separately for each employee.

(5) Cases filed by an individual employee involving multiple respondents are docketed separately for each respondent.

[Statutory Authority: RCW 28B.52.080, 34.05.220, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-650, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.220. WSR 96-07-105, § 391-08-650, filed 3/20/96, effective 4/20/96.]

#### **WAC 391-08-670 Decision numbering—Citation of cases—Indexing of decisions.**

(1) Each decision issued by the agency in an adjudicative proceeding under the Administrative Procedure Act is assigned a unique number consisting of two or three components, as follows:

(a) The first component, consisting of a number, indicates the sequential number of adjudicative proceedings in which one or more decisions has been issued since the agency commenced operations on January 1, 1976.

(b) The second component (where appropriate) consisting of an alphabetic code in ascending alphabetical order, indicates the second and subsequent decisions issued in the case to which the numerical component was originally assigned.

(c) The third component, consisting of a four-letter alphabetic code, indicates the statute under which the decision was issued:

"CCOL" indicates cases decided under chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges).

"EDUC" indicates cases decided under chapter 41.59 RCW (Educational Employment Relations Act).

"FCBA" indicates cases decided under chapter 41.76 RCW (faculty at public four-year institutions of higher education).

"MRNE" indicates cases decided under chapter 47.64 RCW, relating to the Washington state ferries system.

"PECB" indicates cases decided under chapter 41.56 RCW (Public Employees' Collective Bargaining Act), including some cases involving port districts.

"PORT" indicates cases decided exclusively under chapter 53.18 RCW (Employment Relations—Collective Bargaining and Arbitration), relating to port districts.

"PRIV" indicates cases decided under chapter 49.08 RCW, relating to private sector employers and employees.

"PSRA" indicates cases decided under RCW 41.06.340 and/or chapter 41.80 RCW (Personnel System Reform Act).

(2) All citations of agency decisions in subsequent agency decisions, in publications of agency decisions, and in briefs and written arguments filed by parties with the agency shall conform to the formats specified in this section:

GENERAL RULE: Citations shall list only the name of the employer *italicized*, the word "Decision" followed by the decision number, and the statute and year the decision was issued (in parenthesis).

Examples: *City of Roe*, Decision 1234 (PECB, 1992)  
*City of Roe*, Decision 1234-A (PECB, 1993)  
*City of Roe*, Decision 1234-B (PECB, 1994)

EXCEPTION: For decisions in which an employee organization or labor organization was named as the respondent in an unfair labor practice case, the citation shall list the name of the union (in parenthesis) following the name of the employer.

Example: *City of Roe (Doe Union)*, Decision 2345 (PECB, 1995)

(3) The agency encourages the publication and indexing of its decisions by private firms, but does not contribute financial support to any such firm and declines to declare any private firm as the "official reporter" of agency decisions.

(4) To satisfy the requirements of RCW 42.17.260(5), the agency publishes its decisions, together with a search engine, on its web site at: "www.perc.wa.gov".

[Statutory Authority: RCW 28B.52.080, 34.05.220, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-670, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, and 34.05.220. WSR 03-11-029, § 391-08-670, filed 5/15/03, effective 6/15/03; WSR 03-03-064, § 391-08-670, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, and 34.05.220. WSR 00-24-044, § 391-08-670, filed 11/30/00, effective 1/1/01; WSR 96-07-105, § 391-08-670, filed 3/20/96, effective 4/20/96.]

**WAC 391-08-800 Agency records—Public records officer—Contact information.** (1) Any person wishing to request access to public records of the agency, or seeking assistance in making such a request should contact the public records officer of the agency:

David I. Gedrose  
 Public Records Officer, Public Employment Relations Commission  
 P.O. Box 40919  
 360-570-7322  
 David.Gedrose@perc.wa.gov

Information is also available at the agency's web site at [www.perc.wa.gov](http://www.perc.wa.gov).

(2) The public records officer will oversee compliance with the act but another staff member may process the request. Therefore, these rules refer to the public records officer "or designee." The public records officer or designee will provide the "fullest assistance" to requestors, ensure that public records are protected from damage or disorganization, and prevent fulfilling public records requests from causing excessive interference with essential functions of the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. WSR 10-20-172, § 391-08-800, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.220 and 34.05.476. WSR 98-14-112, § 391-08-800, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090 and 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08, 53.18 and 42.17 RCW. WSR 90-06-070, § 391-08-800, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-800, filed 1/27/77.]

**WAC 391-08-810 Agency records—Confidentiality.** The agency shall preserve the confidentiality of certain records, as follows:

(1) In order to protect the privacy of individual employees, the agency shall not permit the disclosure to any person of evidence furnished as a showing of interest in support of a representation petition or motion for intervention.

(2) In order to respect the confidential nature of mediation, the agency shall not permit the disclosure of notes and memoranda made by any member of the commission or its staff as a recording of communication made or received while acting in the capacity of a mediator between the parties to a labor dispute.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.060, 41.56.070, 41.56.100, 41.56.440, 41.58.020, 41.59.120 and 49.08.010. WSR 99-14-060, § 391-08-810, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 98-14-112, § 391-08-810, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.060, 41.56.070, 41.56.100, 41.56.440, 41.58.020, 41.59.120 and 49.08.010. WSR 90-06-070, § 391-08-810, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-810, filed 1/27/77.]

**WAC 391-08-820 Agency offices.** (1) The agency maintains its principal office in the city of Olympia, Washington.

(a) The street address of the Olympia office is:

Public Employment Relations Commission  
 112 Henry Street N.E., Suite 300  
 Olympia, Washington 98504-0919.

(b) The mailing address of the Olympia office is:

Public Employment Relations Commission  
 P.O. Box 40919  
 Olympia, Washington 98504-0919.

(2) The agency maintains a branch office at:

Public Employment Relations Commission  
 Suite 201  
 9757 Juanita Drive NE  
 Kirkland, Washington 98034.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-08-820, filed 1/31/08, effective 2/1/08.]

tive 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 96-07-105, § 391-08-820, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-820, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-045 (Order 80-4), § 391-08-820, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-820, filed 1/27/77.]

**WAC 391-08-830 Agency records—Availability—Organization—Requests.** (1) Hours for inspection of records. Public records are available for inspection and copying during normal business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the Olympia office of the agency.

(2) Organization of records. The agency will maintain its records in a reasonably organized manner. The agency will take reasonable actions to protect records from damage and disorganization. A requestor shall not take agency records from its offices without the permission of the public records officer or his or her designee. A variety of records is available on the agency web site at [www.perc.wa.gov](http://www.perc.wa.gov). Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(3) Making a request for public records:

(a) Any person wishing to inspect or copy public records of the agency should make the request by letter, fax, or e-mail addressed to the public records officer and including the following information:

- (i) Name of requestor;
- (ii) Address of requestor;
- (iii) Other contact information, including telephone number and any e-mail address;
- (iv) Identification of the public records adequate for the public records officer or designee to locate the records; and
- (v) The date and time of day of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or make a deposit. Pursuant to WAC 391-08-860 standard photocopies will be provided at fifteen cents per page.

(c) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. WSR 10-20-172, § 391-08-830, filed 10/6/10, effective 11/6/10.]

**WAC 391-08-840 Processing of public records requests.** (1) Within five business days of receipt of the request, the public records officer will do one or more of the following:

- (a) Make the records available for inspection or copying;
- (b) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;
- (c) Provide a reasonable estimate of when records will be available;

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(2) Protecting rights of others. In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(3) Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the agency believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(4) Inspection of records.

(a) Consistent with other demands, the agency shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the agency to copy.

(b) The requestor must claim or review the assembled records within thirty days of the agency's notification to him or her that the records are available for inspection or copying. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the agency may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(5) Providing copies of records. After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

(6) Providing records in installments. When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that manner. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(7) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate

that the agency has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(8) Closing withdrawn or abandoned request. When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the agency has closed the request.

(9) Later discovered documents. If, after the agency has informed the requestor that it has provided all available records, the agency becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. WSR 10-20-172, § 391-08-840, filed 10/6/10, effective 11/6/10.]

**WAC 391-08-850 Processing of public records—Electronic records.** (1) The process for requesting electronic public records is the same as for requesting paper public records.

(2) When a requestor requests electronic records in an electronic format, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record.

(3) Customized access to data bases. With the consent of the requestor, the agency may provide customized access under RCW 43.105.280 if the record is not reasonably locatable or not reasonably translatable into the format requested. The agency may charge a fee consistent with RCW 43.105.-280 for such customized access.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. WSR 10-20-172, § 391-08-850, filed 10/6/10, effective 11/6/10.]

**WAC 391-08-860 Exemptions to public records.**

[Statutory Authority: [RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060.] WSR 10-20-172, § 391-08-860, filed 10/6/10, effective 11/6/10.]

**WAC 391-08-870 Costs for providing public records.**

(1) There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for fifteen cents per page and color copies for twenty-five cents per page.

(2) Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The agency will not charge sales tax when it makes copies of public records.

(3) The cost of electronic copies of records shall be one dollar for information on a CD-ROM. There will be no

charge for e-mailing electronic records to a requestor, unless another cost applies.

(4) The agency may also charge actual costs of mailing, including the cost of the shipping container.

(5) Payment may be made by cash, check, or money order to the "Public Employment Relations Commission."

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. WSR 10-20-172, § 391-08-870, filed 10/6/10, effective 11/6/10.]

**WAC 391-08-880 Review of denial of public records.**

(1) Any person who objects to the initial denial or partial denial of a records request may petition in writing to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) The public records officer shall promptly provide the petition and any other relevant information to the executive director who will immediately consider the petition and either affirm or reverse the denial within two business days following the agency's receipt of the petition, or within such other time as agency and the requestor mutually agree to.

(3) If the agency denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter under the procedure set forth under WAC 44-06-160.

(4) Judicial review. Any person may obtain court review of denials of public records requests at the conclusion of two business days after the initial denial of such request regardless of any internal administrative appeal.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. WSR 10-20-172, § 391-08-880, filed 10/6/10, effective 11/6/10.]