

Chapter 292-120 WAC

EXECUTIVE ETHICS BOARD—PENALTY RULES

WAC

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WAC 292-120-010 Purpose. The purpose of this rule is to set out the criteria that the board may consider when imposing sanctions for a violation of chapter 42.52 RCW and the rules adopted under it.

[Statutory Authority: RCW 42.52.360 (2)(e)-(g). WSR 97-07-058, § 292-120-010, filed 3/18/97, effective 4/18/97.]

WAC 292-120-020 Board may impose sanctions. If the board finds a violation of chapter 42.52 RCW or rules adopted under it, the board may impose one or more of the following sanctions:

(1) Reprimand, either by letter of instruction or formal reprimand;

(2) Recommend to the appropriate authorities suspension, removal from the position, or prosecution or other appropriate remedy;

(3) A civil penalty of up to five thousand dollars per violation or three times the economic value of any thing sought or received in violation of chapter 42.52 RCW or rules adopted under it, whichever is greater. Payment of the civil penalty shall be reduced by the amount of costs paid pursuant to subsection 5;

(4) Payment of damages sustained by the state that were caused by the violation and were not recovered by the state auditor;

(5) Costs, including reasonable investigative costs, that do not exceed the amount of any civil penalty;

(6) Recommend to the governor and the appropriate agency that they request the attorney general bring an action to cancel or rescind action taken by the violator, upon a board finding that:

(a) The violation has substantially influenced the state action; and

(b) Interests of the state require cancellation or rescission.

[Statutory Authority: RCW 42.52.360 (2)(e)-(g). WSR 97-07-058, § 292-120-020, filed 3/18/97, effective 4/18/97.]

WAC 292-120-030 Criteria for determining sanctions. In determining the appropriate sanction, including the amount of any civil penalty, the board may consider the nature of the violation and the extent or magnitude or severity of the violation, including:

(1) The monetary cost of the violation including:

(a) The cost of the violation to the state;

(b) The value of anything received or sought in the violation;

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(c) The amount of any damages incurred by the state as a result of the violation;

(d) The costs incurred in enforcement, including reasonable investigative costs;

(2) The nature of the violation including whether the violation:

(a) Was continuing in nature;

(b) Was motivated by financial gain;

(c) Involved criminal conduct;

(d) Impaired a function of the agency;

(e) Tended to significantly reduce public respect for or confidence in state government or state government officers or employees;

(f) Involved personal gain or special privilege to the violator;

(3) Aggravating circumstances including whether the violator:

(a) Intentionally committed the violation with knowledge that the conduct constituted a violation;

(b) Attempted to conceal the violation prior to the filing of the complaint;

(c) Was untruthful or uncooperative in dealing with the board or the board's staff;

(d) Had significant official, management, or supervisory responsibility;

(e) Had committed prior violations found by the board;

(f) Incurred no other sanctions as a result of the violation;

(4) Mitigating factors including:

(a) Prior corrective action taken against the violator;

(b) Prior recovery of damages to the state;

(c) The unethical conduct was approved or required by the violator's supervisor;

(d) The violation was unintentional;

(e) Other mitigating factors deemed relevant by the board.

(5) For purposes of this section, each act which violates one or more provisions of chapter 42.52 RCW, or rules adopted under it, may constitute a separate violation.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 02-04-003, § 292-120-030, filed 1/23/02, effective 2/23/02. Statutory Authority: RCW 42.52.360 (2)(e)-(g). WSR 97-07-058, § 292-120-030, filed 3/18/97, effective 4/18/97.]

WAC 292-120-035 Safe harbor provision. The board invites and encourages agencies to adopt policies that prevent agency employees from violating the Ethics in Public Service Act. Pursuant to RCW 42.52.360(4), the board may review and approve agency policies. In determining appropriate sanctions, the board may consider agency policies in effect at the time of the conduct. In addition:

(1) The board will not impose sanctions for conduct that would violate the Ethics in Public Service Act, if the conduct at issue was permitted under a board-approved agency policy,

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as provided for in RCW 42.52.360(4), prior to the conduct occurring.

(2) The effect of the safe harbor from sanction, as provided in WAC 292-120-035(1), shall be limited to conduct that conforms to a board-approved agency policy.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 02-04-003, § 292-120-035, filed 1/23/02, effective 2/23/02.]

WAC 292-120-040 Payment of civil penalty. Payment of any monetary penalty assessed by the board must be made within 45 days of the date of the board's order, unless an extension is granted by the board.

[Statutory Authority: RCW 42.52.360 (2)(e)-(g). WSR 97-07-058, § 292-120-040, filed 3/18/97, effective 4/18/97.]