

SSB 6019 - H COMM AMD  
By Committee on Judiciary

ADOPTED 4/14/2015

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 34.05.455 and 1988 c 288 s 416 are each amended to  
4 read as follows:

5 (1) A presiding officer may not communicate, directly or  
6 indirectly, regarding any issue in the proceeding other than  
7 communications necessary to procedural aspects of maintaining an  
8 orderly process, with any person employed by the agency without  
9 notice and opportunity for all parties to participate, except as  
10 provided in this subsection:

11 (a) Where the ultimate legal authority of an agency is vested in  
12 a multimember body, and where that body presides at an adjudication,  
13 members of the body may communicate with one another regarding the  
14 proceeding;

15 (b) Any presiding officer may receive aid from legal counsel, or  
16 from staff assistants who are subject to the presiding officer's  
17 supervision; and

18 (c) Presiding officers may communicate with other employees or  
19 consultants of the agency who have not participated in the proceeding  
20 in any manner, and who are not engaged in any investigative or  
21 prosecutorial functions in the same or a factually related case;  
22 provided that no other employee or consultant of the agency may  
23 attempt to coerce or improperly influence the action of the presiding  
24 officer in reaching his or her decision in a proceeding. An agency  
25 head's expectation that a presiding officer will consider written  
26 agency policies during his or her decision making is not coercion or  
27 improper influence.

28 (d) This subsection does not apply to communications required for  
29 the disposition of ex parte matters specifically authorized by  
30 statute.

31 (2) Unless required for the disposition of ex parte matters  
32 specifically authorized by statute or unless necessary to procedural  
33 aspects of maintaining an orderly process, a presiding officer may

1 not communicate, directly or indirectly, regarding any issue in the  
2 proceeding, with any person not employed by the agency who has a  
3 direct or indirect interest in the outcome of the proceeding, without  
4 notice and opportunity for all parties to participate.

5 (3) Unless necessary to procedural aspects of maintaining an  
6 orderly process, persons to whom a presiding officer may not  
7 communicate under subsections (1) and (2) of this section may not  
8 communicate with presiding officers without notice and opportunity  
9 for all parties to participate.

10 (4) If, before serving as presiding officer in an adjudicative  
11 proceeding, a person receives an ex parte communication of a type  
12 that could not properly be received while serving, the person,  
13 promptly after starting to serve, shall disclose the communication in  
14 the manner prescribed in subsection (5) of this section.

15 (5) A presiding officer who receives an ex parte communication in  
16 violation of this section shall place on the record of the pending  
17 matter all written communications received, all written responses to  
18 the communications, and a memorandum stating the substance of all  
19 oral communications received, all responses made, and the identity of  
20 each person from whom the presiding officer received an ex parte  
21 communication. The presiding officer shall advise all parties that  
22 these matters have been placed on the record. Upon request made  
23 within ten days after notice of the ex parte communication, any party  
24 desiring to rebut the communication shall be allowed to place a  
25 written rebuttal statement on the record. Portions of the record  
26 pertaining to ex parte communications or rebuttal statements do not  
27 constitute evidence of any fact at issue in the matter unless a party  
28 moves the admission of any portion of the record for purposes of  
29 establishing a fact at issue and that portion is admitted pursuant to  
30 RCW 34.05.452.

31 (6) If necessary to eliminate the effect of an ex parte  
32 communication received in violation of this section, a presiding  
33 officer who receives the communication may be disqualified, and the  
34 portions of the record pertaining to the communication may be sealed  
35 by protective order.

36 (7) The agency shall, and any party may, report any violation of  
37 this section to appropriate authorities for any disciplinary  
38 proceedings provided by law. In addition, each agency by rule may

1 provide for appropriate sanctions, including default, for any  
2 violations of this section."

3 Correct the title.

EFFECT: Removes a requirement that all presiding officers issue final orders.

Removes a prohibition against agency employees requiring, as part of an employment evaluation, that a presiding officer decide cases according to the agency head's unwritten policies.

Prohibits any employee or consultant of an agency from coercing or improperly influencing the action of a presiding officer in reaching a decision in a proceeding.

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