

**Chapter 292-100 WAC
PROCEDURAL RULES**

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WAC

292-100-005 Purpose.
292-100-006 Adoption of model rules of procedure.
292-100-007 Definitions.
292-100-020 Complaint procedures—Status of complainant and others.
292-100-030 Complaint procedures.
292-100-041 Investigation of complaints.
292-100-042 Board staff referral of allegations.
292-100-045 Dismissal of complaints.
292-100-046 Complainant's request for review of executive director's dismissal order.
292-100-047 Board member's request for review of executive director's dismissal order.
292-100-050 Determination on reasonable cause.
292-100-060 Notice of hearing—Filing of answer.
292-100-080 Investigation procedures—Subpoenas.
292-100-090 Cases resolvable by stipulation.
292-100-100 Prehearing conference.
292-100-105 Discovery—Authority of presiding officer.
292-100-110 Hearings—Discovery—Subpoenas.
292-100-120 Hearings—Discovery—Methods authorized.
292-100-130 Hearings—Discovery—Depositions and interrogatories—Notice.
292-100-140 Depositions and interrogatories in hearings—Protection of parties and deponents.
292-100-150 Discovery—Production of documents and use at hearing.
292-100-160 Conduct of hearings.
292-100-170 Review of initial orders by an administrative law judge.
292-100-175 A board member's request for review of initial orders.
292-100-180 Brief adjudicative proceeding—Authority.
292-100-190 Brief adjudicative proceeding—Procedure.
292-100-200 Brief adjudicative proceeding—Administrative review procedures.
292-100-210 Reconsideration of final orders.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

292-100-010 Initiation of complaint. [Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 01-13-033, § 292-100-010, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). WSR 99-06-073, § 292-100-010, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). WSR 96-22-028, § 292-100-010, filed 10/30/96, effective 11/30/96.] Repealed by WSR 17-01-138, filed 12/20/16, effective 1/20/17. Statutory Authority: RCW 42.52.360.

292-100-040 Acceptance and preliminary review of complaints. [Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 01-13-033, § 292-100-040, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). WSR 99-06-073, § 292-100-040, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). WSR 96-22-028, § 292-100-040, filed 10/30/96, effective 11/30/96.] Repealed by WSR 17-01-138, filed 12/20/16, effective 1/20/17. Statutory Authority: RCW 42.52.360.

292-100-070 Investigation materials not disclosable during investigation. [Statutory Authority: RCW 42.52.360 (2)(b). WSR 99-06-073, § 292-100-070, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). WSR 96-22-028, § 292-100-070, filed 10/30/96, effective 11/30/96.] Repealed by WSR 01-13-033, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425.

292-100-220 Effective date. [Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 01-13-033, § 292-100-220, filed 6/13/01, effective 7/14/01.] Repealed by WSR 21-24-094, filed 12/1/21, effective 1/1/22. Statutory Authority: RCW 42.52.360.

WAC 292-100-005 Purpose. The purpose of this chapter is to promulgate executive ethics board rules concerning complaints, investigations, and hearings pursuant to RCW 42.52.410, 42.52.420, 42.52.430, 42.52.470 and 42.52.500.

[Statutory Authority: RCW 42.52.360 (2)(b). WSR 99-06-073, § 292-100-005, filed 3/2/99, effective 4/2/99.]

WAC 292-100-006 Adoption of model rules of procedure. The model rules of procedure, chapter 10-08 WAC, adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, are hereby adopted for use by the board. In the case of a conflict between the model rules of procedure and procedural rules adop-

ted in this chapter, the procedural rules adopted by the board shall take precedence.

[Statutory Authority: RCW 42.52.360 (2)(b). WSR 99-06-073, § 292-100-006, filed 3/2/99, effective 4/2/99.]

WAC 292-100-007 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board staff" shall include the executive director, investigators, administrative officer, and assistant attorneys general who bring cases before the board.

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

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

(4) "Investigation" means the fact finding conducted prior to a dismissal or reasonable cause determination.

(5) "Party" includes the board staff and the respondent.

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

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

[Statutory Authority: RCW 42.52.360. WSR 17-01-138, § 292-100-007, filed 12/20/16, effective 1/20/17. Statutory Authority: RCW 42.52.360 (2)(b). WSR 05-19-142, § 292-100-007, filed 9/21/05, effective 10/22/05. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 01-13-033, § 292-100-007, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). WSR 99-06-073, § 292-100-007, filed 3/2/99, effective 4/2/99.]

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

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

(3) This section does not affect the right to request a review of a board staff decision to dismiss a complaint, pursuant to RCW 42.52.425 and WAC 292-100-045.

[Statutory Authority: RCW 42.52.360. WSR 17-01-138, § 292-100-020, filed 12/20/16, effective 1/20/17. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 01-13-033, § 292-100-020, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). WSR 99-06-073, § 292-100-020, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). WSR 96-22-028, § 292-100-020, filed 10/30/96, effective 11/30/96.]

WAC 292-100-030 Complaint procedures. (1) A complaint filed with the board shall be in writing on a form provided by the board or in an appropriate written form that includes the information in subsection (2) of this section, and signed by the complainant or by the complainant's counsel, unless anonymous.

(2) A complaint shall include:

(a) The complainant's name, unless anonymous;

(b) A statement of the nature of the alleged violation(s) and the name of person(s) responsible as well as the date, time, and place of each alleged violation; and

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

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

[Statutory Authority: RCW 42.52.360. WSR 17-01-138, § 292-100-030, filed 12/20/16, effective 1/20/17. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 01-13-033, § 292-100-030, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). WSR 99-06-073, § 292-100-030, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). WSR 96-22-028, § 292-100-030, filed 10/30/96, effective 11/30/96.]

WAC 292-100-041 Investigation of complaints. (1) During the course of an investigation, the board staff will give the respondent(s) a copy of the complaint or a summary of the complaint, and an opportunity to respond to the allegations. In accordance with RCW 42.52.410, the complainant's name and identifying information may be redacted from the complaint.

(2) During the course of the investigation board staff will provide the employing agency with a copy of the complaint or a summary of the complaint, unless board staff determines it would impede the investigation. In accordance with RCW 42.52.410, the complainant's name and identifying information may be redacted from the complaint.

[Statutory Authority: RCW 42.52.360. WSR 17-01-138, § 292-100-041, filed 12/20/16, effective 1/20/17. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 01-13-033, § 292-100-041, filed 6/13/01, effective 7/14/01.]

WAC 292-100-042 Board staff referral of allegations. (1) If the complaint is outside the jurisdiction of the board, the board or its staff may also refer such allegations to an appropriate agency with jurisdiction.

(2) The board staff may refer a complaint to the employing agency for investigation and recommendation of resolution. In accordance with RCW 42.52.410, the complainant's name and identifying information may be redacted from the complaint.

(a) The referral will include a copy of the complaint and all supporting documentation and shall include a date for submission of the report and recommendation, allowing at least thirty days. The agency receiving the referral may request additional time, if needed.

(b) During the course of the agency's investigation, the agency will contact the respondent and provide the respondent with a copy of the complaint. The agency will provide the respondent with an opportunity to respond to the allegations.

(3) If board staff determine that a complaint alleges conduct which may violate a criminal statute, the board staff may refer the complaint to the appropriate law enforcement authority. Once referred, the board staff will suspend their investigation until the law enforcement authority responds as to whether criminal charges will be filed. If the law enforcement authority elects to file criminal charges, no further action will be taken while the criminal case is pending. If the law enforcement authority elects not to file criminal charges, board staff will complete their investigation.

[Statutory Authority: RCW 42.52.360. WSR 17-01-138, § 292-100-042, filed 12/20/16, effective 1/20/17. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 01-13-033, § 292-100-042, filed 6/13/01, effective 7/14/01.]

WAC 292-100-045 Dismissal of complaints. (1) The executive director may dismiss the complaint if the board or the board staff determines that:

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

(b) The complaint is obviously unfounded or frivolous; or

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

(2) If the executive director dismisses the complaint, the investigation report and a written notice of the executive director's order of dismissal will be provided to the complainant, respondent, and the board and will include a statement of the complainant's right to request review of the dismissal by the board.

(3) If the board dismisses the complaint, written notice will be provided to the complainant and the respondent.

[Statutory Authority: RCW 42.52.360. WSR 17-01-138, § 292-100-045, filed 12/20/16, effective 1/20/17. Statutory Authority: RCW 42.52.360 (2)(b). WSR 07-02-001, § 292-100-045, filed 12/20/06, effective 1/20/07. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 01-13-033, § 292-100-045, filed 6/13/01, effective 7/14/01.]

WAC 292-100-046 Complainant's request for review of executive director's dismissal order. (1) A written request for review by a complainant must be received at the board's administrative office no later than twenty days after the date the order of dismissal is mailed to the complainant.

(2) A request for review must state the grounds for the request for review.

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

(a) The complaint;

- (b) The investigation report;
- (c) The order of dismissal;
- (d) The complainant's request for review;
- (e) The executive director's response to the request for review;

and

(f) Any additional material requested by the chair or the chair's designee.

(4) At the next available opportunity, the board will review the record and deliberate in closed session, without oral argument, and act on the request by:

- (a) Affirming the dismissal;
- (b) Directing board staff to conduct further investigation; or
- (c) Issuing a determination that there is reasonable cause to believe that a violation has been or is being committed.

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

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

[Statutory Authority: RCW 42.52.360. WSR 17-01-138, § 292-100-046, filed 12/20/16, effective 1/20/17. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 01-13-033, § 292-100-046, filed 6/13/01, effective 7/14/01.]

WAC 292-100-047 Board member's request for review of executive director's dismissal order.

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

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

- (a) The complaint;
- (b) The investigation report;
- (c) The order of dismissal;
- (d) Any additional material requested by the chair, the chair's designee or the board member who requested the review.

(3) At the next available opportunity, the board will review the record and deliberate in closed session, without oral argument, and act on the request by:

- (a) Affirming the dismissal;
- (b) Directing board staff to conduct further investigation; or
- (c) Issuing a determination that there is reasonable cause to believe that a violation has been or is being committed.

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

(5) The board's decision will be in writing and provided to the complainant and the respondent.

[Statutory Authority: RCW 42.52.360. WSR 17-01-138, § 292-100-047, filed 12/20/16, effective 1/20/17. Statutory Authority: RCW 42.52.360

(2)(b) and 42.52.425. WSR 01-13-033, § 292-100-047, filed 6/13/01, effective 7/14/01.]

WAC 292-100-050 Determination on reasonable cause. (1) Following an investigation and preparation of the written investigative report, if the complaint is not dismissed by the executive director under WAC 292-100-045, the results of the investigation will be presented to the board. Board staff may recommend that the board find reasonable cause, including a recommendation as to the potential penalty, or may recommend that the matter be dismissed.

(2) Upon receipt of the board staff's investigation report and recommendation, the board will determine:

(a) Whether there is reasonable cause to believe that a violation of chapter 42.52 RCW has occurred, and the potential penalty; or

(b) Whether to dismiss the matter.

(3) The board's review of reasonable cause determinations will be done in closed session.

(4) If after determining reasonable cause, the board determines that the penalty and costs should be greater than \$500, the respondent will be given the option to have an administrative law judge conduct the hearing and rule on procedural and evidentiary matters in accordance with RCW 42.52.500.

(5) The board may, on its own initiative, choose to retain an administrative law judge to conduct any hearing.

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

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

(b) Reject or concur with the report and recommendation and dismiss the complaint; or

(c) Concur with the report and recommendation and proceed under this section; or

(d) Concur with the report and recommendation and refer the matter to the employing agency for implementation of the recommendation if the recommendation is within the agency's authority to implement. The agency will report implementation to the board and the board will then dismiss the complaint.

[Statutory Authority: RCW 42.52.360. WSR 21-24-094, § 292-100-050, filed 12/1/21, effective 1/1/22; WSR 17-01-138, § 292-100-050, filed 12/20/16, effective 1/20/17. Statutory Authority: RCW 42.52.360 (2)(b). WSR 07-02-001, § 292-100-050, filed 12/20/06, effective 1/20/07. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 01-13-033, § 292-100-050, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). WSR 99-06-073, § 292-100-050, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). WSR 96-22-028, § 292-100-050, filed 10/30/96, effective 11/30/96.]

WAC 292-100-060 Notice of hearing—Filing of answer. (1) Following the board's determination on reasonable cause, the board will provide the complainant, the respondent and the employing agency with

a copy of the written determination on reasonable cause and investigative report.

(2) The respondent has 30 days from the time the determination on reasonable cause is served to file an answer to the determination on reasonable cause and request an adjudicative proceeding and/or settlement. If the penalty is over \$500, the respondent may request an administrative law judge at the hearing. The administrative judge's role is limited to ruling on procedural and evidentiary matters.

(3) Failure to file an answer and request an adjudicative hearing and/or settlement within 30 days of service constitutes a default, and the board may proceed to resolve the case without further notice to, or hearing for the benefit of, the respondent.

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

(5) If a hearing is requested by the respondent, the respondent will be notified of the date of the hearing no later than seven days before the hearing date.

[Statutory Authority: RCW 42.52.360. WSR 21-24-094, § 292-100-060, filed 12/1/21, effective 1/1/22. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 01-13-033, § 292-100-060, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). WSR 99-06-073, § 292-100-060, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). WSR 96-22-028, § 292-100-060, filed 10/30/96, effective 11/30/96.]

WAC 292-100-080 Investigation procedures—Subpoenas. (1) During the course of an investigation, the board, or the executive director may issue subpoenas to persons to appear and give testimony, and may require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material to the investigation. The subpoena must:

(a) Specifically describe the information which is sought, and
(b) Require the production of information at a reasonable place and time, but no later than 10 days from the date it is served, and
(c) Notify the person that if the information is not produced, the board will apply to the superior court for an appropriate order or other remedy.

(2) The subpoena may be personally delivered or sent by certified mail, return receipt requested.

[Statutory Authority: RCW 42.52.360. WSR 21-24-094, § 292-100-080, filed 12/1/21, effective 1/1/22. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 01-13-033, § 292-100-080, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). WSR 99-06-073, § 292-100-080, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). WSR 96-22-028, § 292-100-080, filed 10/30/96, effective 11/30/96.]

WAC 292-100-090 Cases resolvable by stipulation. (1) Any respondent may request settlement by notifying board staff in writing.

(2) Settlement may be accomplished by a stipulation of facts, conclusions and penalty by the parties or a stipulated order agreed to by the parties.

(3) Any proposed stipulation must be in writing and signed by each party to the stipulation and their attorney, if represented. Board staff will present the proposed stipulation to the board for consideration.

(4) The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented.

(a) If the board accepts the stipulation or modifies the stipulation with the agreement of the respondent, the board will enter the stipulation.

(b) If the board rejects the stipulation or the respondent does not agree to the board's proposed modifications to the stipulation, the normal hearing process will continue.

(c) If the board requests additional facts, the matter will be referred to the board staff for further investigation.

(5) The proposed stipulation and information obtained during settlement discussions will not be admitted into evidence at a subsequent hearing.

[Statutory Authority: RCW 42.52.360. WSR 21-24-094, § 292-100-090, filed 12/1/21, effective 1/1/22. Statutory Authority: RCW 42.52.360 (2)(b). WSR 99-06-073, § 292-100-090, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). WSR 96-22-028, § 292-100-090, filed 10/30/96, effective 11/30/96.]

WAC 292-100-100 Prehearing conference. (1) In any proceeding, the presiding officer upon the presiding officer's own motion or upon request by board staff or the respondent or their counsel, may direct the board staff and respondent to appear at a specified time and place for a prehearing conference to consider:

(a) Simplification of issues;

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

(c) Limitation on the number of witnesses;

(d) Authorizing discovery by any party;

(e) Scheduling order; and

(f) Procedural and such other matters as may aid in the disposition of the proceeding.

(2) Prehearing conferences may be held by teleconference, video conference, or any method specified by the presiding officer.

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

[Statutory Authority: RCW 42.52.360. WSR 21-24-094, § 292-100-100, filed 12/1/21, effective 1/1/22. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 01-13-033, § 292-100-100, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). WSR

99-06-073, § 292-100-100, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). WSR 96-22-028, § 292-100-100, filed 10/30/96, effective 11/30/96.]

WAC 292-100-105 Discovery—Authority of presiding officer. After a finding of reasonable cause, no discovery is permitted by a party pursuant to WAC 292-100-110 through 292-100-150 unless authorized by the presiding officer. In deciding whether to authorize discovery and the extent of discovery to be allowed, the presiding officer will consider the party's need for discovery while ensuring that discovery does not unduly delay the hearing.

[Statutory Authority: RCW 42.52.360. WSR 21-24-094, § 292-100-105, filed 12/1/21, effective 1/1/22. Statutory Authority: RCW 42.52.360 (2)(b). WSR 99-06-073, § 292-100-105, filed 3/2/99, effective 4/2/99.]

WAC 292-100-110 Hearings—Discovery—Subpoenas. (1) All subpoenas for hearings must be filed with the presiding officer, together with proof of proper service, at least five days prior to the date of the hearing for which they are issued. All subpoenas will be issued and may be enforced in the form and manner set forth in RCW 34.05.446 and WAC 10-08-120.

(2) The presiding officer, upon motion and before the time specified in the subpoena at issue, may:

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

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

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

[Statutory Authority: RCW 42.52.360. WSR 21-24-094, § 292-100-110, filed 12/1/21, effective 1/1/22. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 01-13-033, § 292-100-110, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). WSR 99-06-073, § 292-100-110, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). WSR 96-22-028, § 292-100-110, filed 10/30/96, effective 11/30/96.]

WAC 292-100-120 Hearings—Discovery—Methods authorized. The following discovery methods are authorized: Deposition upon oral examination, written interrogatories, requests for production, and requests for admission. Deposition upon oral examination, written interrogatories, and requests for admission may be used as evidence in the hearing. The attendance of witnesses to a deposition may be compelled by use of a subpoena. Depositions will be taken in accordance with this rule and the rules on subpoenas, unless board staff and the respondent stipulate to other arrangements.

[Statutory Authority: RCW 42.52.360. WSR 21-24-094, § 292-100-120, filed 12/1/21, effective 1/1/22. Statutory Authority: RCW 42.52.360

(2)(b). WSR 99-06-073, § 292-100-120, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). WSR 96-22-028, § 292-100-120, filed 10/30/96, effective 11/30/96.]

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

[Statutory Authority: RCW 42.52.360. WSR 21-24-094, § 292-100-130, filed 12/1/21, effective 1/1/22. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 01-13-033, § 292-100-130, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). WSR 99-06-073, § 292-100-130, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). WSR 96-22-028, § 292-100-130, filed 10/30/96, effective 11/30/96.]

WAC 292-100-140 Depositions and interrogatories in hearings—Protection of parties and deponents. (1) After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the presiding officer may order that the deposition may:

- (a) Not be taken; or
- (b) That it may be taken only at some designated place other than that stated in the notice; or
- (c) That it may be taken only on written interrogatories; or
- (d) That certain matters must not be inquired into; or
- (e) That the scope of the examination must be limited to certain matters; or
- (f) That the examination may be held with no one present except the parties to the action and their officers or counsel; or
- (g) The presiding officer may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression.

(2) At any time during the taking of the deposition, on motion of any party or the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the presiding officer may order the party conducting the examination to cease from taking the deposition or may limit the scope and manner of the taking of the deposition as provided above. If the order made terminates the examination, it may be resumed only upon the order of the presiding officer. Upon demand of the objecting party or deponent, the taking of the deposition must be suspended for the time necessary to make a motion for an order.

[Statutory Authority: RCW 42.52.360. WSR 21-24-094, § 292-100-140, filed 12/1/21, effective 1/1/22. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 01-13-033, § 292-100-140, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). WSR 99-06-073, § 292-100-140, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). WSR 96-22-028, § 292-100-140, filed 10/30/96, effective 11/30/96.]

WAC 292-100-150 Discovery—Production of documents and use at hearing. (1) Any materials to be presented at the hearing must be provided to the executive director and to the opposing party no less than 10 days prior to the hearing.

(2) Upon agreement by both parties, additional documentary evidence may be presented at the hearing. The parties must arrive at the hearing location or make documents available in sufficient time before the time scheduled for the hearing for the purpose of exchanging exhibits to be introduced. When documents are to be offered into evidence at the hearing, the one offering the exhibit shall provide a minimum of seven copies.

(3) If the parties do not reach an agreement on the submission of additional documentary evidence, at the commencement of the hearing the presiding officer will, after hearing argument, rule on the admissibility of the documents. The proponent of the documents proposed for submission must show good cause why the documents could not be submitted 10 days prior to the hearing.

(4) "Good cause" is a substantial reason or legal justification for failing to appear, to act, or respond to an action. To show good cause, the presiding officer must find that a party had a good reason for what they did or did not do, using the provisions of Superior Court civil rule 60 as a guideline.

[Statutory Authority: RCW 42.52.360. WSR 21-24-094, § 292-100-150, filed 12/1/21, effective 1/1/22. Statutory Authority: RCW 42.52.360 (2)(b). WSR 07-02-001, § 292-100-150, filed 12/20/06, effective 1/20/07. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 01-13-033, § 292-100-150, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). WSR 99-06-073, § 292-100-150, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). WSR 96-22-028, § 292-100-150, filed 10/30/96, effective 11/30/96.]

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

(2) Hearings may be conducted in-person, by video conference, or other virtual means as determined by the presiding officer and in accordance with WAC 10-08-180. Preference should be given to the method which will facilitate the timeliest hearing.

When circumstances prevent the scheduling of an in-person hearing, virtual hearings are strongly encouraged unless a party can demonstrate it will be prejudiced by such a hearing in accordance with the APA and WAC 10-08-180.

(3) A hearing must be conducted either by the board or by an administrative law judge.

(a) If an administrative law judge participates by request of a respondent, the board may choose to sit with the administrative law judge to hear the matter. If an administrative law judge sits with the board, the administrative law judge will rule on procedural and evidentiary matters.

(b) If an administrative law judge hears the matter at the request of the board, the board may choose to sit with the administrative law judge or the board may request that the administrative law judge hear the matter alone and prepare an initial order.

(4) Following a hearing, the board or administrative law judge may conclude that:

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 42.52.360. WSR 21-24-094, § 292-100-160, filed 12/1/21, effective 1/1/22. Statutory Authority: RCW 42.52.360 (2)(b). WSR 07-02-001, § 292-100-160, filed 12/20/06, effective 1/20/07. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 01-13-033, § 292-100-160, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). WSR 99-06-073, § 292-100-160, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). WSR 96-22-028, § 292-100-160, filed 10/30/96, effective 11/30/96.]

WAC 292-100-170 Review of initial orders by an administrative law judge. (1) An initial order by an administrative law judge will become the final order of the board within 45 days of the initial order unless:

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

(b) A party files a petition for review of the initial order within 30 days of the entry of the initial order.

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

(3) Petitions for review must be filed with the executive director and served on all other parties. The party not filing the petition for review will have 20 days to reply to the petition for review. The reply must be filed with the executive director and copies of the reply must be served on all other parties. A reply to a petition for review may include a cross-petition for review.

(4) If the reply contains a cross-petition for review, it must specify portions of the initial order to which exception is taken by the replying party, and refer to the evidence of the record relied upon. A respondent to a cross-petition for review will have 20 days to reply to the cross-petition for review. The reply to the cross-petition for review must be filed with the executive director and copies of the reply to the cross-petition for review must be served on all other parties.

(5) When considering a petition for review, the board must consider the whole record or the portions of it cited by the parties.

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

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

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

[Statutory Authority: RCW 42.52.360. WSR 21-24-094, § 292-100-170, filed 12/1/21, effective 1/1/22. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 01-13-033, § 292-100-170, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). WSR 99-06-073, § 292-100-170, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). WSR 96-22-028, § 292-100-170, filed 10/30/96, effective 11/30/96.]

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

(2) A board member who is requesting review of an initial order must provide written notice to the executive director within 30 days of service on the board member.

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

(4) The board will consider the whole record or the portions of the record as required for its deliberation.

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

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

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

[Statutory Authority: RCW 42.52.360. WSR 21-24-094, § 292-100-175, filed 12/1/21, effective 1/1/22. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 01-13-033, § 292-100-175, filed 6/13/01, effective 7/14/01.]

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

[Statutory Authority: RCW 42.52.360. WSR 21-24-094, § 292-100-180, filed 12/1/21, effective 1/1/22. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 01-13-033, § 292-100-180, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). WSR 99-06-073, § 292-100-180, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). WSR 96-22-028, § 292-100-180, filed 10/30/96, effective 11/30/96.]

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

(2) The executive director will send the respondent notice, which must include:

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

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

(c) The respondent's right to respond, within 20 days, either in writing or in person to explain the respondent's view of the matter.

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

(4) After the brief adjudicative proceeding, the presiding officer must serve upon each party a written statement describing the violation, the reasons for the decision, the penalty and costs imposed and their right to request review by the board.

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

[Statutory Authority: RCW 42.52.360. WSR 21-24-094, § 292-100-190, filed 12/1/21, effective 1/1/22. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 01-13-033, § 292-100-190, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). WSR 99-06-073, § 292-100-190, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). WSR 96-22-028, § 292-100-190, filed 10/30/96, effective 11/30/96.]

WAC 292-100-200 Brief adjudicative proceeding—Administrative review procedures. (1) The board will conduct a review of the initial order upon the written or oral request of a party if the board receives the request within 20 days after the service of the initial order.

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

(3) The order on review must be in writing stating the findings made, and the reasons for the decision, and notice that judicial review is available. The order on review must be entered within 21 days after the date of the initial order or of the request for review, whichever is later.

[Statutory Authority: RCW 42.52.360. WSR 21-24-094, § 292-100-200, filed 12/1/21, effective 1/1/22. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 01-13-033, § 292-100-200, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). WSR 99-06-073, § 292-100-200, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). WSR 96-22-028, § 292-100-200, filed 10/30/96, effective 11/30/96.]

WAC 292-100-210 Reconsideration of final orders. (1) Within 10 days of the service of a final order, any party may file a petition for reconsideration stating the specific grounds upon which relief is requested. The petition for review must be filed at the office of the board and served on the parties.

(2) Any party may respond to a petition for reconsideration. The response is due no later than 10 days after the party is served with the request.

[Statutory Authority: RCW 42.52.360. WSR 21-24-094, § 292-100-210, filed 12/1/21, effective 1/1/22. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 01-13-033, § 292-100-210, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). WSR 99-06-073, § 292-100-210, filed 3/2/99, effective 4/2/99.]