

Title 292 WAC

ETHICS IN PUBLIC SERVICE

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Chapter 292-08

AGENCY ORGANIZATION—CONFIDENTIALITY

- 292-08-010 Purpose. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-08-010, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.
- 292-08-020 Function. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-08-020, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.
- 292-08-030 Definitions. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-08-030, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.
- 292-08-040 Organization. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-08-040, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.
- 292-08-050 Confidentiality provisions. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-08-050, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

Chapter 292-12

PROCEDURAL RULES

- 292-12-010 Preliminary investigation. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-010, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.
- 292-12-020 Initial proceedings. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-020, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.
- 292-12-030 Statement of charges. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-030, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

- 292-12-040 Fact-finding hearing. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-040, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.
- 292-12-050 Disqualification of fact-finder. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-050, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.
- 292-12-060 Procedural rights of judge. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-060, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.
- 292-12-070 Guardian ad litem. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-070, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.
- 292-12-080 Discovery procedure before fact-finding. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-080, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.
- 292-12-090 Amendments to statement of charges or answer. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-090, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.
- 292-12-110 Procedure at fact-finding hearing. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-110, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.
- 292-12-120 Report of fact-finder. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-120, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.
- 292-12-130 Commission decision. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-130, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.
- 292-12-140 Additional evidence. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-140, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.
- 292-12-150 Supreme court procedures. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-150, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

- 292-12-160 Reinstatement of eligibility. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-160, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.
- 292-12-170 Extension of time. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-170, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.
- 292-12-180 Service. [Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-180, filed 5/1/90, effective 6/1/90.] Repealed by 96-17-024, filed 8/13/96, effective 9/18/96. Statutory Authority: Article IV, Section 31 of the State Constitution.

Chapter 292-09 WAC

AGENCY PROCEDURAL RULES

WAC

- 292-09-010 Purpose of this chapter.
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- 292-09-040 Definitions.
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- 292-09-160 Subpoenas.
- 292-09-170 Judicial review.

WAC 292-09-010 Purpose of this chapter. The purpose of this chapter is to provide rules implementing the Ethics in Public Service Act (chapter 42.52 RCW) according to procedures prescribed in Article IV, Section 31, of the Constitution of the state of Washington and chapter 2.64 RCW for the commission on judicial conduct.

All proceedings involving state employees of the judicial branch of state government, except "judges" as defined in chapter 292-08 WAC, shall proceed under the rules set forth in this chapter. All proceedings involving "judges" as defined in RCW 2.64.010 and the Code of Judicial Conduct shall proceed exclusively under the rules set forth in chapters 292-08 and 292-12 WAC.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-010, filed 2/8/95, effective 3/11/95.]

WAC 292-09-020 Role of the commission on judicial conduct. The commission on judicial conduct is constitutionally created to investigate and consider complaints concerning judges. The commission also has jurisdiction to investigate and consider complaints of violations of the Ethics in Public Service Act (chapter 42.52 RCW) or rules adopted under it, concerning state employees of the judicial branch.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-020, filed 2/8/95, effective 3/11/95.]

WAC 292-09-030 Organization of the commission on judicial conduct. Six members of the commission must be present to take action at a commission business meeting. The adoption of or amendment to the rules of the commission shall require the affirmative vote of six members of the commission.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-030, filed 2/8/95, effective 3/11/95.]

WAC 292-09-040 Definitions. In these rules:

"Adjudicative proceeding" means a proceeding before the commission in which the person involved is given notice and an opportunity to be heard after a determination of reasonable cause that a violation of chapter 42.52 RCW or rules adopted under it has been or is being committed.

"Administrative law judge" means a person assigned by the office of administrative hearings in accordance with chapter 34.12 RCW and appointed by the commission to hear and take evidence with respect to charges against a state employee of the judicial branch.

"Commission" means the commission on judicial conduct.

"Complainant" means the organization, association, or person who makes a complaint alleging violation of chapter 42.52 RCW or rules adopted under it.

"Complaint" means a written statement on a form provided by the commission alleging facts which may upon investigation lead to a finding of a violation of chapter 42.52 RCW or rules adopted under it.

"Determination" means a written statement finding that there is or that there is not reasonable cause to believe that a violation of chapter 42.52 RCW or rules adopted under it has been or is being committed.

"Employee" means a state employee or state officer (as defined in RCW 42.52.010) of the judicial branch of state government, except "judges" (as defined in RCW 2.64.010 and the Code of Judicial Conduct), or the employee's attorney, as the context suggests.

"Enforcement action" means the imposition of sanctions, which may include one or more of the following:

- A reprimand;
- A recommendation that the employing agency commence disciplinary action against an employee; and/or
- An order for payment of any damages, civil penalties, and/or costs as permitted by chapter 42.52 RCW.

Any order for payment shall also include a reprimand.

"Fact-finder" means the commission or an administrative law judge appointed by the commission.

"Hearing" means a public hearing conducted in an adjudicative proceeding.

"Investigative panel" means a four-member subcommittee of the commission consisting of two public members, a judge, and a lawyer. The investigative panel shall make all determinations concerning reasonable cause. The panel shall perform oversight functions for commission investigative and prosecutorial functions. Members who serve on the investi-

gative panel shall not serve as the presiding officer at any hearing in the same proceeding.

"Meeting" means a business meeting of the commission for any purpose other than a public hearing or executive session involving the investigation or consideration of a complaint.

"Member" means a member of the commission and includes alternates acting as members.

"Public member" means a member of the commission who is neither a lawyer nor a judge.

"Reprimand" means an enforcement action of the commission that finds that the conduct of the respondent violates chapter 42.52 RCW or rules adopted under it. A reprimand may include a requirement that the respondent follow a specified corrective course of action. The commission shall issue a written reprimand and may require the respondent to appear personally before the commission for a public reading of the reprimand. The commission shall provide a copy of the reprimand to the respondent's employing agency.

"Respondent" means a state employee of the judicial branch who is the subject of a complaint, or the employee's attorney, as the context suggests.

"Staff" means the employees, or others under personal service contract or agreement, engaged to perform commission duties and to exercise commission powers.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-040, filed 2/8/95, effective 3/11/95.]

WAC 292-09-050 Complaints and investigations.

(1) Any organization, association, or person, including a member of the commission, may make a complaint to the commission alleging violation of chapter 42.52 RCW or rules adopted under it. A complaint shall be made in writing on a form provided by the commission. A complaint may be made personally or by the complainant's attorney.

(2) Upon receipt of a complaint, the commission staff shall investigate and evaluate the allegations. The investigation shall be limited to the facts alleged in the complaint. On every complaint received, the commission staff shall make a written recommendation that there is or that there is not reasonable cause to believe that a violation of chapter 42.52 RCW or rules adopted under it has been or is being committed. The investigative panel shall make a written determination whether there is reasonable cause based upon the complaint and the recommendation. A copy of the determination shall be provided to the complainant and to the respondent. If the determination concludes that there is no reasonable cause, a copy shall also be provided to the attorney general.

(3) Complaints pursuant to RCW 42.52.450 shall be investigated by the attorney general. As appropriate, pursuant to RCW 42.52.470, the investigative panel or the commission may refer a complaint to the employing agency, the attorney general, or the prosecutor.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-050, filed 2/8/95, effective 3/11/95.]

WAC 292-09-060 Determination of reasonable cause. If the investigative panel determines that reasonable cause exists that the respondent has violated chapter 42.52 RCW or rules adopted under it, the commission shall schedule a public hearing on the merits of the complaint.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-060, filed 2/8/95, effective 3/11/95.]

WAC 292-09-070 Respondent's answer to complaint. The respondent shall file a written answer to the complaint not later than thirty days after receipt of the determination that there is reasonable cause. Failure to file a written answer shall be deemed an admission to the facts alleged in the complaint and the determination.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-070, filed 2/8/95, effective 3/11/95.]

WAC 292-09-080 Stipulated dispositions. Any matter before the commission may be disposed of by a stipulation at any stage of the proceeding. The respondent and a member of the commission staff shall sign the stipulation before presentation to the commission. The commission may impose any terms and conditions deemed appropriate. If the stipulation is rejected by the commission, the stipulation shall be withdrawn and cannot be used by or against the respondent in any proceeding.

When a stipulation which disposes of a complaint is accepted by the commission, the commission shall provide a copy of the stipulation to the attorney general and the complainant.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-080, filed 2/8/95, effective 3/11/95.]

WAC 292-09-090 Adoption of model rules of procedure. Part IV—Adjudicative Proceedings—of chapter 34.05 RCW and 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 commission. In the case of conflict between chapter 34.05 RCW or the model rules of procedure and procedural rules adopted in this chapter, the procedural rules adopted by the commission shall take precedence.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-090, filed 2/8/95, effective 3/11/95.]

WAC 292-09-100 Presiding officer. (1) In matters involving an adjudicative proceeding, the commission may designate as presiding officer a member of the commission, or an administrative law judge assigned by the office of administrative hearings under the authority of chapter 34.12 RCW.

(2) A person who has served as an investigator, prosecutor, or advocate in any stage of an adjudicative proceeding, or someone who is subject to the authority or direction of such a person, may not serve as a presiding officer in the same proceeding.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-100, filed 2/8/95, effective 3/11/95.]

WAC 292-09-110 Discovery. The statutes and court rules regarding pretrial procedures in civil cases in superior courts of the state of Washington shall be used where applicable unless in conflict with this chapter.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-110, filed 2/8/95, effective 3/11/95.]

WAC 292-09-120 Discovery—Authority of presiding officer. The presiding officer may permit discovery in an adjudicative proceeding. The presiding officer shall have the power to control the frequency and nature of discovery permitted and to order conferences to discuss discovery issues.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-120, filed 2/8/95, effective 3/11/95.]

WAC 292-09-130 Fact-finding hearing. (1) Upon filing of a determination of reasonable cause, a public fact-finding hearing will be scheduled at a location and time selected by the commission. The respondent shall have at least twenty days notice of the hearing and shall appear at the hearing in person, with or without counsel.

(2) Where there is a possibility that the respondent may be liable for a total amount of penalty and costs of more than five hundred dollars, the respondent may choose to have an administrative law judge conduct the hearing. The respondent shall indicate such choice in writing within thirty days after receipt of the determination. Notwithstanding the respondent's choice, the commission may, on its own initiative, retain an administrative law judge.

(3) Testimony taken at the hearing shall be under oath and recorded.

(4) The case in support of the complaint shall be presented at the hearing by commission staff. After the staff's case in chief, the respondent shall have the opportunity to present evidence. Both parties shall have the opportunity to cross-examine witnesses.

(5) If, based upon a preponderance of the evidence, the fact-finder finds that the respondent has violated chapter 42.52 RCW or rules adopted under it, the fact-finder shall file an order stating findings of fact, conclusions, and an enforcement action.

(6) If, based upon all the evidence, the fact-finder finds that the respondent has not engaged in an alleged violation of chapter 42.52 RCW or rules adopted under it, the fact-finder shall file an order stating findings of fact, conclusions, and an order dismissing the complaint.

(7) Civil penalties included within an enforcement action shall be established based upon the following nonexclusive aggravating and mitigating factors:

(a) Whether the violation is an isolated instance or evidences a pattern of conduct;

(b) The nature, extent, and frequency of occurrence of the violation;

(c) Whether the employee acknowledged or recognized that the violation occurred;

(d) Whether the employee has evidenced an effort to change or modify the conduct that resulted in a violation;

(e) The length of service of the employee;

(f) Whether there have been prior violations of ethics rules by the employee;

(g) The effect the violation has upon the integrity and respect for the judiciary; and

(h) The extent to which the employee exploited the position to satisfy personal desires.

(8) If the fact-finder is not the commission, the decision shall be entered as an initial order. Unless the respondent or the commission's staff files a petition for review of an initial order within twenty days of service of the initial order, the commission may adopt the initial order as its final order without further notice to the respondent. If the commission, upon its own motion, determines that the initial order should be reviewed, notice shall be given to the respondent.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-130, filed 2/8/95, effective 3/11/95.]

WAC 292-09-140 Documents—Filing. Any document filed with the commission under the provisions of the Administrative Procedure Act, chapter 34.05 RCW; model rules of procedure, chapter 10-08 WAC; and this chapter shall be filed with the Commission on Judicial Conduct, 908 5th Avenue S.E., P.O. Box 1817, Olympia, WA 98507.

Unless otherwise required by law, filing of a document with the commission shall be made personally, by first class mail, by certified or registered mail, by commercial parcel delivery company, or by facsimile and same-day mailing or original showing same-day postmark. Filing shall occur within the period of time specified for filing by statute, rule, or order.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-140, filed 2/8/95, effective 3/11/95.]

WAC 292-09-150 Witness fees. All witnesses shall receive fees and expenses in the amount allowed by law for witnesses in the superior court. The person calling the witness shall be responsible for paying the witness's fees and expenses.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-150, filed 2/8/95, effective 3/11/95.]

WAC 292-09-160 Subpoenas. (1) Investigative. The commission may subpoena witnesses, compel their attendance, administer oaths, take testimony of a person under oath, or require production for examination of any books, accounts, records, certificates, or papers relating to any matter under investigation or in question before the commission. Subpoenas may be issued by any member of the commission.

(2) Adjudicative. Subpoenas shall be issued and enforced as provided by chapter 10-08 WAC, chapter 34.05 RCW, and chapter 42.52 RCW, as appropriate.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-160, filed 2/8/95, effective 3/11/95.]

WAC 292-09-170 Judicial review. Except as otherwise provided by law, judicial review of a commission order that a violation of chapter 42.52 RCW or rules adopted under it has occurred is governed by the provisions of chapter 34.05 RCW applicable to review of adjudicative proceedings.

[Statutory Authority: RCW 42.52.370 and Article IV, section 31 of the state Constitution. 95-05-031 (Order 95-01), § 292-09-170, filed 2/8/95, effective 3/11/95.]

Chapter 292-10 WAC
PUBLIC RECORDS

WAC

- 292-10-010 Purpose.
292-10-020 Public records available.
292-10-030 Records index.
292-10-040 Requests for public records.
292-10-050 Fees.
292-10-060 Statement of reasons for denial of public records request.
292-10-070 Protection of public records.

WAC 292-10-010 Purpose. The purpose of this chapter is to implement those provisions of RCW 42.17.250 through 42.17.340 relating to access to public records.

[Statutory Authority: RCW 42.17.250, [42.17.]260 and Washington State Constitution, Article IV, section 31. 91-04-060 (Order 3), § 292-10-010, filed 2/5/91, effective 3/8/91.]

WAC 292-10-020 Public records available. All commission public records are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 2.64.111 and 42.17.310. In accordance with chapter 256, Laws of 1990, work and home addresses of any person requesting in writing that their addresses be kept private because disclosure would endanger life, safety or property, shall be omitted from all documents in public files.

[Statutory Authority: RCW 42.17.250, [42.17.]260 and Washington State Constitution, Article IV, section 31. 91-04-060 (Order 3), § 292-10-020, filed 2/5/91, effective 3/8/91.]

WAC 292-10-030 Records index. The indexes developed by or for the agency shall be available to all persons under the same rules and under the same conditions as are applied to public records available for inspection and shall be available at the offices of the agency.

[Statutory Authority: RCW 42.17.250, [42.17.]260 and Washington State Constitution, Article IV, section 31. 91-04-060 (Order 3), § 292-10-030, filed 2/5/91, effective 3/8/91.]

WAC 292-10-040 Requests for public records. (1) All requests for inspection or copying made in person at the agency shall be made on a form substantially as follows:

REQUEST FOR PUBLIC RECORDS

Date Time
Name
Address

Representing
Description of Records:
.

I certify that lists of names obtained through this request for public records will not be used for commercial purposes.

Signature

Number of copies
Number of pages
Per page charge \$
Total charge \$

(2) All requests made in person may be made to the agency at 908 E. 5th, Olympia, Washington, between the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding legal holidays.

(3) A request for inspection or copying of public records may be made by mail in a letter containing the following information:

- (a) The name and address of the person making the request;
(b) The organization or group that the person represents;
(c) The time of day and the calendar date on which the person wishes to inspect the public records;
(d) A description of the public records requested;
(e) A statement whether access to copying equipment is desired;
(f) A phone number where the person can be reached in case the public records officer or designee needs to contact the person for further description of the material or any other reason;
(g) A statement that the record will not be used for commercial purposes.

(4) All requests by mail should be received at the agency at least three business days before the requested date of inspection to allow the public records officer or designee to make certain the requested records are available and not exempt and, if necessary, to contact the person requesting inspection.

(5) The agency may in its discretion fill requests made by telephone.

[Statutory Authority: RCW 42.17.250, [42.17.]260 and Washington State Constitution, Article IV, section 31. 91-04-060 (Order 3), § 292-10-040, filed 2/5/91, effective 3/8/91.]

WAC 292-10-050 Fees. No fee shall be charged for inspection of public records. The agency may charge a reasonable fee, determined from time to time by the director, for providing copies. The fee shall be the amount necessary to reimburse the agency for its actual costs incident to such copying.

[Statutory Authority: RCW 42.17.250, [42.17.]260 and Washington State Constitution, Article IV, section 31. 91-04-060 (Order 3), § 292-10-050, filed 2/5/91, effective 3/8/91.]

WAC 292-10-060 Statement of reasons for denial of public records request. When the agency refuses, in whole or in part, a written request for inspection of any public

record, it shall include a statement of the specific exemption authorizing the refusal and a brief explanation of how the exemption applies to the record withheld.

[Statutory Authority: RCW 42.17.250, [42.17.]260 and Washington State Constitution, Article IV, section 31. 91-04-060 (Order 3), § 292-10-060, filed 2/5/91, effective 3/8/91.]

WAC 292-10-070 Protection of public records. In order to protect the public records of the agency, the following guidelines shall be adhered to by any person inspecting such public records:

(1) No public records shall be removed from the agency's premises.

(2) Inspection of any public record shall be conducted in the presence of a designated agency employee.

(3) No public records may be marked or defaced in any manner during inspection.

(4) Public records which are maintained in a file or jacket, or chronological order, may not be dismantled except for purposes of copying and then only by commission director or designee.

(5) Access to file cabinets, shelves, and other storage areas with public records is restricted to office personnel, unless other arrangements are made with the commission director or designee.

[Statutory Authority: RCW 42.17.250, [42.17.]260 and Washington State Constitution, Article IV, section 31. 91-04-060 (Order 3), § 292-10-070, filed 2/5/91, effective 3/8/91.]

Chapter 292-100 WAC PROCEDURAL RULES

WAC

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292-100-020	Complaint procedures—Status of complainant and others.
292-100-030	Procedures for filing complaints.
292-100-040	Investigation of complaints.
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292-100-060	Notice of hearing—Filing of answer.
292-100-070	Investigation materials not disclosable during investigation.
292-100-080	Investigation procedures—Subpoenas.
292-100-090	Informal settlement—Cases resolvable by stipulation.
292-100-100	Conduct of hearings.
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292-100-120	Hearings—Discovery—Subpoenas.
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292-100-150	Depositions and interrogatories in hearings—Protection of parties and deponents.
292-100-160	Discovery—Production of documents and use at hearing.
292-100-170	Brief enforcement hearings—Authority.
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292-100-190	Brief enforcement hearing—Administrative review procedures.
292-100-200	Reconsideration and review of decisions.

WAC 292-100-010 Initiation of complaint. (1) A complaint alleging a violation of chapter 42.52 RCW may be filed by:

- (a) Any person;
- (b) The board;

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(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 shall be disqualified from acting in his or her official capacity with regard to the disposition of that complaint.

(3) Other agencies may refer information about possible violations of chapter 42.52 RCW to the board for consideration. The board will file a complaint if appropriate.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-010, filed 10/30/96, effective 11/30/96.]

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 staff, nor any other person shall have special standing to participate or intervene in the investigation or consideration of the complaint by the board. The staff shall give notice to the complainant of any open board hearings on the matter.

(2) The person or persons alleged in a complaint to have violated chapter 42.52 RCW, are respondents as to that complaint.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-020, filed 10/30/96, effective 11/30/96.]

WAC 292-100-030 Procedures for filing complaints.

(1) A complaint filed with the board shall be in writing on a form provided by the board and signed by the complainant. A complaint signed by the complainant may also be filed by the complainant's representative.

(2) A complaint shall include:

(a) The complainant's name; except that the board may choose to issue a complaint based upon information provided by a person who refuses to be identified;

(b) A statement of the nature of the alleged violation or violations, date, time and place of each occurrence and name of person or persons responsible; 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, or does not contain enough information to allege a violation of chapter 42.52 RCW, will not be accepted for filing.

(4) The board will not consider allegations in a properly filed complaint that fall outside the jurisdiction of the board.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-030, filed 10/30/96, effective 11/30/96.]

WAC 292-100-040 Investigation of complaints. (1) Upon acceptance of a complaint the board staff shall conduct an investigation.

(2) If board staff determine that a complaint alleges conduct which may violate a criminal statute, the staff shall refer the complaint to the appropriate prosecuting attorney or the Washington State Patrol and shall suspend their investigation until the prosecuting attorney or the Washington State Patrol responds as to whether criminal charges will be filed. If the prosecuting attorney elects to file criminal charges, no further action will be taken while the criminal case is

pending. If the prosecuting attorney elects not to file criminal charges, board staff shall complete their investigation and follow the procedures set forth in these rules.

(3) During the course of the investigation, the board staff shall contact the respondent(s) and provide the respondent(s) with a copy of the complaint.

(4) It is the intent of the board that board staff who are investigating a complaint will work with the agency that employs the respondent, unless in the judgment of the investigator it will impede the investigation. During the course of the investigation, the board staff shall provide the agency that employs respondent a copy of the complaint.

(5) The board may refer a complaint to the agency that employs the respondent for investigation and recommendation of resolution. 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 30 days. The agency receiving the referral may request additional time, if needed. During the course of the agency's investigation, the agency shall contact the respondent and provide the respondent with a copy of the complaint.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-040, filed 10/30/96, effective 11/30/96.]

WAC 292-100-050 Determination on reasonable cause. (1) Following the investigation, the board staff shall prepare a written investigation report and make a recommendation to the board on whether to find reasonable cause, including a recommendation as to whether the penalty may be greater than \$500.

(2) Upon receipt of the board staff's investigation report and recommendation, the board shall determine whether or not there is reasonable cause to believe that a violation of chapter 42.52 RCW has occurred.

(3) The board's reasonable cause determination shall be done in closed session.

(4) If the board finds reasonable cause, the board shall consider whether the penalty for the alleged violation may be greater than \$500. If the board may wish to impose a penalty greater than \$500, the respondent may be given the option to have an administrative law judge conduct the hearing and rule on procedural and evidentiary matters. If the respondent is not given that option, the board may not impose a penalty greater than \$500. The board may, on its own initiative, choose to retain an administrative law judge to conduct any hearing.

(5) Upon receipt of an investigation report and recommendation on a complaint referred to the agency that employs the respondent for investigation, the board shall either:

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

(b) Concur with the report and recommendation and either initiate a hearing if the recommended penalty is a monetary fine or refer the matter back to the referral agency for implementation of the recommendation, if the recommended penalty involves disciplinary action.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 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 shall provide the complainant, the respondent and the agency that employs the respondent with a copy of the written determination on reasonable cause and with a copy of the board staff's written investigation report. If reasonable cause is found, the determination of reasonable cause shall include a statement of the alleged violations. Prior to scheduling a public hearing, the board shall provide the respondent with an explanation of the option to request that the hearing be conducted by an administrative law judge if the penalty for the alleged violation may be greater than \$500.

(2) Within 30 days of the issuance of the written determination on reasonable cause, the respondent shall file an answer which shall state his/her response to the alleged violations. The answer shall include either a request for or a waiver of the right to request an administrative law judge if the penalty for the alleged violation may be greater than \$500.

(3) The respondent shall be notified of the date of the hearing no later than 30 days before the hearing date.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-060, filed 10/30/96, effective 11/30/96.]

WAC 292-100-070 Investigation materials not disclosable during investigation. (1) It is the policy of the board during the course of any investigation that all records generated or collected as a result of that investigation are exempt from public inspection and copying under RCW 42.17.310 (1)(d). The investigation is not considered complete until the board has made its reasonable cause determination as to whether there is reasonable cause to believe a violation has occurred. If a public records request is made following the reasonable cause determination for any such record which implicates the privacy of an individual, written notice of the records request will be provided to the individual in order that such individual may request a protective order from a court under RCW 42.17.330.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-070, 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 any board member, may issue a subpoena directed to any person who is likely to possess information which is relevant and material to the investigation. The subpoena shall:

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

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

(c) Notify the person that if the information is not produced, the board will apply to the superior court for an appropriate order or other remedy. The subpoena may be personally delivered or sent by certified mail, return receipt requested.

(2) The board may issue a subpoena under RCW 42.52.390 to compel persons to appear and give testimony and may require the production of any books, papers,

correspondence, memorandums or other documents which the board deems relevant and material.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-080, filed 10/30/96, effective 11/30/96.]

WAC 292-100-090 Informal settlement—Cases resolvable by stipulation. (1) RCW 34.05.060 authorizes agencies to establish by rule specific procedures for attempting and executing informal settlement of matters. The following procedures are available for informal dispute resolution that may make more elaborate proceedings under the Administrative Procedure Act unnecessary.

(a) Any respondent may request settlement by notifying the staff of the board in writing.

(b) If settlement may be accomplished by negotiation, negotiations shall be commenced at the earliest possible time. Settlement may be concluded by:

(i) Stipulation of facts by the parties; or

(ii) Stipulation of facts, conclusions and penalty by the parties.

(2) Any proposed stipulation shall be in writing and signed by each party to the stipulation or his or her representative. The stipulation shall be recited on the record at the hearing. The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts the stipulation or modifies the stipulation with the agreement of the respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or the respondent does not agree to the board's proposed modifications to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussions shall not be admitted into evidence at a subsequent public hearing. If the board requests additional facts be presented, the matter shall be referred to the board staff for further investigation.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-090, filed 10/30/96, effective 11/30/96.]

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

(2) A hearing shall be conducted either by the board or by an administrative law judge. If an administrative law judge participates, either by request of a respondent or by request of the board, the board may choose to sit with the administrative law judge to hear the matter and to enter a final order at the conclusions of the proceedings; or to have the administrative law judge hear the matter alone and prepare an initial order for review by the board. If an administrative law judge sits with the board, he or she shall rule on procedural and evidentiary matters.

(3) After the hearing the board or administrative law judge may find that:

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

(b) Respondent(s) is (are) in apparent 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.

(4) Following a hearing in which the board participates, the board

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

(b) Shall deliver, either in person or by mail, to each respondent, complainant and the agency that employs the respondent, a copy of the findings of fact, conclusions of law and decision.

(5) Following a hearing in which the board does not participate, the administrative law judge shall

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

(b) Shall deliver, either in person or by mail to each respondent 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.

(c) If neither the board staff nor the respondent files exceptions to the initial order within 20 days, the board may adopt the initial order as the final order of the board.

(d) Within 20 days of entry of the initial order, either the board staff or the respondent may file written exceptions to the initial order. Such exceptions shall be filed with the secretary to the board and served on all other parties. The board shall set a date for submission of written argument on the exceptions and shall notify the board staff and the respondent in writing.

(e) The board shall review the initial order, any exceptions and argument filed and shall issue a final order which shall be delivered, either in person or by mail, to the board staff and the respondent, complainant and the agency that employs the respondent.

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

WAC 292-100-110 Prehearing conference—Rule.

(1) In any proceeding, the board chair or an administrative law judge upon his/her own motion or upon request by staff or the respondent or their qualified representative, may direct the staff or respondent to appear at a specified time and place for a conference to consider:

(a) Simplification of issues;

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

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

(d) Limitation on the number of witnesses; and

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

(2) Prehearing conferences may be presided over by the chair or an administrative law judge.

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

(4) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken and decisions made at the 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 shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-110, filed 10/30/96, effective 11/30/96.]

WAC 292-100-120 Hearings—Discovery—Subpoenas. (1) The board or a board member may issue subpoenas for discovery, 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 and the board or presiding officer may issue protective orders as appropriate. Any party may issue subpoenas. All subpoenas must be filed with the board, together with proof of proper service, at least five days prior to the date of the hearing for which they are issued. Such subpoenas will issue and may be enforced in the form and manner set forth in RCW 34.05.446 and WAC 10-08-120.

(2) The board, upon motion and before the time specified in the subpoena for compliance therewith, may:

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

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

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

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

WAC 292-100-130 Hearings—Discovery—Depositions and interrogatories—Right to take. Unless otherwise provided, any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for use as evidence in the hearing. The attendance of witnesses to a deposition may be compelled by use of a subpoena. Depositions shall be taken only in accordance with this rule and the rules on subpoenas, except that staff and the respondent may stipulate to other arrangements.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-130, filed 10/30/96, effective 11/30/96.]

WAC 292-100-140 Hearings—Discovery—Depositions and interrogatories—Notice. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than seven days in writing to the board 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 board or its hearing officer may for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-140, filed 10/30/96, effective 11/30/96.]

WAC 292-100-150 Depositions and interrogatories in hearings—Protection of parties and deponents. After

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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 board or its designated hearing officer may order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or the board may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression. At any time during the taking of the deposition, on motion of any party or the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the board or its designated hearing officer may order the officer conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it shall be resumed only upon the order of the board. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-150, filed 10/30/96, effective 11/30/96.]

WAC 292-100-160 Discovery—Production of documents and use at hearing. (1) Upon request by either the board or the staff or the respondent copies of all materials to be presented at the hearing shall be provided to the requester within seven days of the request but, for good cause shown, not less than three business days prior to the date of the hearing.

(2) When documents are to be offered into evidence at the hearing, the one offering the exhibit shall provide a minimum of seven copies, one for opposing party, one for each member of the board, and one for the board's legal advisor.

(3) If documentary evidence has not been exchanged prior to the hearing, the parties shall arrive at the hearing location in sufficient time before the time scheduled for the hearing for the purpose of exchanging copies of exhibits to be introduced.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-160, filed 10/30/96, effective 11/30/96.]

WAC 292-100-170 Brief enforcement hearings—Authority. (1) The board may provide a brief enforcement hearing for violations of provisions in chapter 42.52 RCW in which the facts are undisputed, the violations appear to be relatively minor in nature, and a penalty no greater than \$500 will be assessed for the violations.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-170, filed 10/30/96, effective 11/30/96.]

WAC 292-100-180 Brief enforcement hearing—Procedure. (1) A brief enforcement hearing may be

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presided over by the chair, or a member of the board designated by the chair.

(2) When a violation is alleged, before taking action, the secretary of the board shall send the alleged violator notice, which shall include:

(a) Alleged violation;

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

(c) Person's right to respond, within ten days, either in writing or in person to explain his/her view of the matter.

(3) At the time of the hearing if the presiding officer believes alleged violations are of such magnitude as to merit penalties greater than \$500, the presiding officer shall immediately adjourn the hearing and direct the matter be scheduled for an enforcement hearing by the full board or an administrative law judge.

(4) At the time any unfavorable action is taken, the presiding officer shall serve upon each party a written statement describing the violation, the reasons for the decision, the penalty imposed and their right to request review by the board at the next scheduled board meeting.

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

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-180, filed 10/30/96, effective 11/30/96.]

WAC 292-100-190 Brief enforcement hearing—Administrative review procedures. (1) The board shall conduct a review of the initial order upon the written or oral request of a party if the board receives the request within twenty-one 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 shall be in writing stating the findings made, and the reasons for the decision, and notice that judicial review is available. The order on review shall be entered within twenty-one days after the date of the initial order or of the request for review, whichever is later.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-190, filed 10/30/96, effective 11/30/96.]

WAC 292-100-200 Reconsideration and review of decisions. (1) For purposes of this rule, "decision" means any findings, conclusions, order, or other action by the board which is reviewable by a court.

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

(3) Such a request for reconsideration shall be served at the office of the board, or motion made, no later than ten days after service of the decision of which reconsideration is sought.

(4) A request or motion for reconsideration shall specify the grounds therefor.

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

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

(7) The board shall act on the reconsideration, at the next meeting at which it practicably may do so by: (a) Deciding whether to reconsider its decision, and (b) if it decides to do so, either affirming or amending its decision: Provided, That before a decision may be amended other than by lowering a penalty, the respondent shall be given notice and an opportunity to be heard if, and in the same manner, as required for the original decision.

[Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-200, filed 10/30/96, effective 11/30/96.]

Chapter 292-110 WAC AGENCY SUBSTANTIVE RULES

WAC

292-110-010	Use of state resources.
292-110-020	Working hours.
292-110-030	Measurable expenditure.

WAC 292-110-010 Use of state resources. (1) No state officer or state employee may use state resources including any person, money, or property under the officer's or employee's official control or direction or in his or her custody for private benefit or gain of the officer or employee or any other person; PROVIDED, that this prohibition does not apply to the use of public resources to benefit another person as part of the officer's or employee's official duties.

(2) Under circumstances described in sections three and four of this rule, a state officer or employee may make occasional but limited use of state resources for his or her private benefit if there is no actual cost to the state or the cost to the state is de minimis. The cost to the state is de minimis if the actual expenditure of state funds is so small as to be insignificant or negligible.

(3) Notwithstanding the prohibition in section one of this rule, a state officer or employee may make occasional but limited use of state resources for his or her private benefit, if:

(a) There is no cost to the state; and

(b) The use of state resources does not interfere with the performance of the officer's or employee's official duties.

Example 1: An employee makes a local telephone call to his home every afternoon on his break to make sure his children have arrived home safely from school. This is not an ethical violation. There is no cost to the state and since the call takes place on the employee's break it will not interfere with the performance of the employee's duties.

Example 2: An employee operates an outside business. Everyday she makes or receives five to ten business calls on her state telephone. All of the

calls are local calls. This is an ethical violation. Although there is no cost to the state, making and receiving private calls throughout the day interferes with the performance of the employee's official duties because she is conducting private business during working hours.

Example 3: An employee posts a notice to sell a used car on the office bulletin board. The notice gives his home telephone number for those interested in inquiring about the car. This is not an ethical violation. There is no cost to the state and posting the notice will not interfere with the performance of his official duties since those who want to inquire about the car can call the employee at home.

Example 4: Once a year, during a two week period, an employee sells candy bars to support a youth soccer team. She leaves the candy bars in the break room and employees may buy the bars on their breaks. This is not an ethical violation. There is no cost to the state and since the transactions are conducted during breaks the activity does not interfere with the performance of her official duties.

Example 5: Every spring a group of employees meet at lunch time to organize an agency softball team. The meeting is held in a conference room that is not needed for agency business during the lunch hour. This is not an ethical violation. There is no cost to the state and since the meeting takes place during the lunch hour it does not interfere with the performance of the employees' official duties.

(4) Notwithstanding the prohibition in section one of this rule, a state officer or employee may make occasional use of state resources for his or her private benefit, if:

(a) The cost to the state is de minimis;

(b) The use of state resources does not interfere with the performance of the officer's or employee's official duties; and

(c) The agency finds that there is some benefit to the public in addition to the private benefit to the officer or employee; a public benefit under this rule may be direct or indirect, such as improving employee morale or activities that improve the work related job skills of an officer or employee.

Example 6: An employee is taking a night school class and after working hours uses her computer to do her homework. She prints her homework using the office printer and her own paper. The agency has determined that the class will enhance the employee's job skills. This is not an ethical violation. The use of the office computer and printer will result in some cost to the state. However, the cost is negligible and the employee is using her own paper. Since the class will enhance the employee's job skills there is a public benefit and, since the activity takes place after working hours it

will not interfere with the performance of the employee's official duties.

Example 7: After working hours an employee uses the office computer and printer to compose and print reports for his private business using his own paper. This is an ethical violation. The use of the office computer and printer will result in some cost to the state. Although the cost is negligible, there is no public benefit to the state from the employee's conducting his private business.

(5) Use of state resources pursuant to sections three and four of this rule is subject to the following qualifications and limitations:

(a) A state officer or employee may not use state resources for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Such a use of state resources is not authorized by this rule and is specifically prohibited by RCW 42.52.180, subject to the exceptions in RCW 42.52.180(2).

(b) A state officer or employee may not make private use of any state property which has been removed from state facilities or other official duty stations, even if there is no cost to the state.

Example 8: Agency equipment includes a video tape player. One night an employee takes the machine home to watch videos of her family vacation. This is an ethical violation. Although there is no cost to the state an employee may not make private use of state equipment removed from state facilities or other official duty station.

Example 9: An employee is assigned to do temporary work in another city away from his usual duty station. To perform his official duties the employee takes an office laptop computer which he has checked out for this purpose from the agency. The agency has previously approved the employee's use of the computer to do homework for a class that will enhance his job skills after working hours. While the employee is on this temporary duty assignment he uses the laptop computer to do his homework after working hours. This is not an ethical violation. The use of the computer for homework in this situation is not an ethical violation (Example 7). Although the employee has removed his laptop computer from the state facility its use is permissible because he is using it at a temporary official duty station.

(c) A state officer or employee may not make private use of any state property which is consumable such as paper, envelopes or spare parts, even if the actual cost to the state is de minimis.

(d) A state officer or employee may not make private use of state computers or other equipment to access computer networks or other databases including, but not limited to, electronic mail and electronic bulletin boards for personal use unrelated to an official business purpose.

Example 10: An employee uses her agency computer to send electronic mail to another employee

regarding the agenda for an agency meeting that both will attend. She also wishes the other employee a happy birthday. This is not an ethical violation. Although there is personal communication in the message, the message was sent for an official business purpose.

Example 11: Two employees use their agency computers to play a game of chess via electronic mail. This is an ethical violation because this use of electronic mail to play chess is not an official business purpose.

(e) In general, a state officer or employee may not make private use of state resources and then reimburse the agency so there is no actual cost to the state. However, the board recognizes that in some limited situations, such as officers or employees working at remote locations, a system of reimbursement may be appropriate. Any system of reimbursement must be established by the agency in advance and must result in no cost to the state. To be valid under this rule a reimbursement system must be approved by the board.

(6) State agencies are encouraged to adopt policies applying these principles to their unique circumstances. Nothing in this rule is intended to limit the ability of an agency to adopt policies that are more restrictive. However, violation of a more restrictive agency policy will not constitute a violation of RCW 42.52.160 but would constitute a violation of agency policy.

[Statutory Authority: RCW 42.52.160(3), 96-01-036, § 292-110-010, filed 12/13/95, effective 1/13/96.]

WAC 292-110-020 Working hours. (1) RCW 42.52.180(1) provides that no state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Facilities of an agency includes use of state officers or state employees during working hours. The purpose of the rule is to define the term "working hours" for officers and employees of the executive branch of state government. The prohibition in RCW 42.52.180(1) only applies during working hours. Nothing in RCW 42.52.180(1) or this rule prohibits a state officer or state employee from assisting in a campaign during non-working hours. An officer or employee who assists in a campaign during non-working hours may not use any facilities of an agency.

(2) Some state officers and state employees occupy positions that have fixed schedules with the same beginning and ending times. For officers and employees with fixed schedules, working hours are the hours between the starting and ending times of their positions. Officers and employees with fixed schedules may not assist in a campaign during these fixed working hours, unless they are on a lunch break under section four of this rule or on annual leave under section five of this rule.

Example 1: An employee works for an agency open to the public during the hours of 8:00 a.m. to 5:00 p.m. The employee is in a position with a fixed schedule of Monday through Friday 8:00 a.m. to 5:00 p.m. The employee's working hours are

8:00 a.m. to 5:00 p.m. Monday through Friday. The employee may not assist in a campaign during these hours unless the employee is on a lunch break or on annual leave. The employee may assist in a campaign before 8:00 a.m. or after 5:00 p.m. Monday through Friday or on Saturday or Sunday.

Example 2: An employee works for an agency open to the public during the hours of 8:00 a.m. to 5:00 p.m. Although the agency is open during the hours 8:00 a.m. to 5:00 p.m., the employee is in a position with a fixed schedule of Monday through Thursday 3:00 p.m. through 12:00 a.m. The employee's working hours are 3:00 p.m. to 12:00 a.m. Monday through Thursday. The employee may not assist in a campaign during these hours unless the employee is on a lunch break or on annual leave. The employee may assist in a campaign before 3:00 p.m. or after 12:00 a.m. Monday through Thursday or anytime on Friday, Saturday or Sunday.

(3) Some state officers and state employees occupy positions that do not have fixed schedules with the same starting and ending times. For officers and employees who do not have fixed schedules, working hours are defined as either:

(a) The hours set forth in any policy on working hours adopted by an agency. Agencies have flexibility in determining working hours for the officers and employees to meet their unique needs so long as the time considered to be working hours is clearly established. If an agency does not adopt a working hours policy, working hours shall be 8:00 a.m. to 5:00 p.m. Monday through Friday when state agencies are generally open to the public; or

(b) The work schedule for an officer or employee approved by the agency, if it is different from the agency policy or, if the agency has not adopted a policy, 8:00 a.m. to 5:00 p.m. Monday through Friday.

Example 3: An employee works for an agency that is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday. Although the agency is open to the public at these times, the work of the agency goes on twenty-four hours a day. The agency has adopted a working hours policy that divides working hours into three shifts: the day shift (8:00 a.m. to 5:00 p.m.); swing shift (3:00 p.m. to 12:00 a.m.) and midnight shift (12:00 a.m. to 9:00 a.m.). An employee without a fixed schedule is assigned to the swing shift (3:00 p.m. to 12:00 a.m.) Monday through Friday. Since the employee does not have a fixed schedule, the employee sometimes comes to work before 3:00 p.m. and sometimes after 3:00 p.m. Similarly, the employee may leave work before or after 12:00 a.m. This employee's working hours are 3:00 p.m. to 12:00 a.m. Monday through Friday. The employee may not assist in a campaign during these hours unless the employee is on a lunch break or on annual leave. The employee may assist in a campaign before 3:00

p.m. or after 12:00 a.m. Monday through Friday or on Saturday or Sunday.

Example 4: An employee works for an agency that is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday. The agency has not adopted a policy on working hours. An employee without a fixed schedule usually works 8:00 a.m. to 5:00 p.m. Since the employee does not have a fixed schedule, the employee sometimes comes to work before 8:00 a.m. and sometimes after 8:00 a.m. Similarly, the employee may leave work before or after 5:00 p.m. Since the agency has not adopted a policy on working hours, this employee's working hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. The employee may not assist in a campaign during these hours unless the employee is on a lunch break or on annual leave. The employee may assist in a campaign before 8:00 a.m. or after 5:00 p.m. Monday through Friday, or on Saturday or Sunday.

Example 5: An employee works for an agency that is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday. Although the agency is open to the public at these times, the work of the agency goes on twenty-four hours a day. The agency has adopted a working hours policy that divides working hours into three shifts: the day shift (8:00 a.m. to 5:00 p.m.); swing shift (3:00 p.m. to 12:00 a.m.) and midnight shift (12:00 a.m. to 9:00 a.m.). An employee without a fixed schedule is assigned to the day shift (8:00 a.m. to 5:00 p.m.) Monday through Friday. However, the agency has approved a different work schedule for this employee. Instead of the usual day shift of 8:00 a.m. to 5:00 p.m., the employee works 7:00 a.m. to 4:00 p.m. Since the employee does not have a fixed schedule the employee, sometimes comes to work before 7:00 a.m. and sometimes after 7:00 a.m. Similarly, the employee may leave work before or after 4:00 p.m. This employee's working hours are 7:00 a.m. to 4:00 p.m. Monday through Friday. The employee may not assist in a campaign during these hours unless the employee is on a lunch break or on annual leave. The employee may assist in a campaign before 7:00 a.m. or after 4:00 p.m. Monday through Friday, or on Saturday or Sunday.

(4) Working hours do not include state legal holidays unless the officer's or employee's work schedule requires the officer or employee to work on a state legal holiday.

(5) Working hours do not include the time approved and designated for an officer's or employee's lunch break. A lunch break is between 12:00 p.m. and 1:00 p.m., unless the agency has designated a different time in a working hours policy or has approved a different lunch break as part of an officer's or employee's work schedule. If an officer or employee engages in campaign activity during the lunch break, the officer or employee may not make use of any of the facilities of the agency.

Example 6: An employee works for an agency that is open to the public 8:00 a.m. to 5:00 p.m. Mon-

day through Friday. The agency has not adopted a policy on working hours. An employee without a fixed schedule usually works 8:00 a.m. to 5:00 p.m. Since the employee does not have a fixed schedule, the employee sometimes comes to work before 8:00 a.m. and sometimes after 8:00 a.m. Similarly, the employee may leave work before or after 5:00 p.m. Since the agency has not adopted a policy on working hours, this employee's working hours are 8:00 a.m. to 5:00 p.m. Monday through Friday with a lunch break between 12:00 p.m. and 1:00 p.m. The employee may assist in a campaign during the employee's lunch break between 12:00 p.m. and 1:00 p.m.

(6) Working hours do not include the time in official leave status if the leave has received advance documented or written authorization. An officer or employee on leave may assist in a campaign.

Example 7: An employee works for an agency that is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday. The agency has not adopted a policy on working hours. An employee without a fixed schedule usually works 8:00 a.m. to 5:00 p.m. Since the employee does not have a fixed schedule, the employee sometimes comes to work before 8:00 a.m. and sometimes after 8:00 a.m. Similarly, the employee may leave work before or after 5:00 p.m. Since the agency has not adopted a policy on working hours, this employee's working hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. On Friday the employee receives advance written authorization to be on leave for five days, Monday through Friday of the next week. The employee may assist in a campaign during this leave.

Example 8: An employee works for an agency that is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday. The agency has not adopted a policy on working hours. An employee without a fixed schedule usually works 8:00 a.m. to 5:00 p.m. Since the employee does not have a fixed schedule the employee sometimes comes to work before 8:00 a.m. and sometimes after 8:00 a.m. Similarly, the employee may leave work before or after 5:00 p.m. Since the agency has not adopted a policy on working hours, this employee's working hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. In this agency employees without fixed schedules take leave during a month and then get written authorization for the leave at the end of the month. An employee takes leave Monday through Friday and assists in a campaign. At the end of the month the employee obtains written authorization for the leave. The employee has assisted in a campaign during working hours since the employee did not obtain written authorization prior to taking leave to assist in a campaign. To assist in a campaign while on leave, the employee must obtain written authorization prior to going on leave.

(7) The definition of working hours also includes any time an officer or employee is actually working. For an

officer or employee with a fixed schedule, working hours includes overtime when the officer or employee is working additional hours other than those in the fixed schedule. For an officer or employee without a fixed schedule, working hours include any time the officer or employee is working.

Example 9: An employee works for an agency that is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday. The agency has not adopted a policy on working hours. An employee without a fixed schedule usually works 8:00 a.m. to 5:00 p.m. Since the employee does not have a fixed schedule, the employee sometimes comes to work before 8:00 a.m. and sometimes after 8:00 a.m. Similarly, the employee may leave work before or after 5:00 p.m. Since the agency has not adopted a policy on working hours, this employee's working hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. On a Monday the employee works from 8:00 a.m. to 9:00 p.m. Even though the employees working hours are 8:00 to 5:00 the time spent working between 5:00 p.m. and 9:00 p.m. are working hours because the employee is working for the agency during this time.

(8) The governor, lieutenant governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction, commissioner of public lands, and the insurance commissioner are state officers in the executive branch subject to RCW 42.52.180. These officers are elected to office and hold office for a term of four years and until their successors are elected and qualified. Since these officers are elected to a term of office, they do not have working hours and may assist in a campaign at any time. However, if these officers do assist in a campaign, they may not make use of any facilities of an agency except as provided in RCW 42.52.180(2).

[Statutory Authority: RCW 42.52.180(1) and 42.52.360 (2)(b). 96-22-030, § 292-110-020, filed 10/30/96, effective 11/30/96.]

WAC 292-110-030 Measurable expenditure. (1) RCW 42.52.180(1) provides that no state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Facilities of an agency include, but are not limited to, use of stationery, postage, machines and equipment, use of state employees during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.

(2) RCW 42.52.180(2) sets forth exceptions to the prohibition in RCW 42.52.180(1). The exceptions include a statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry without an actual measurable expenditure of public funds (RCW 42.52.180 (2)(b)); activities that are part of the normal and regular conduct of the office (RCW 42.52.180 (2)(c)); and de minimis use of public facilities by state-wide elected officials incidental to the preparation or delivery of permissible communications initiated by the official regarding the official's views on a

ballot proposition that may foreseeably affect a matter that falls within the official's constitutional or statutory responsibilities (RCW 42.52.180 (2)(d)).

(3) Elected officials regularly expend public funds to respond to inquiries from the media, constituents and other persons on matters unrelated to ballot propositions. RCW 42.52.180 (2)(b) permits elected officials to respond to such inquiries regarding ballot propositions without an actual measurable expenditure of public funds. For purposes of RCW 42.52.180 (2)(b) measurable expenditure means an expenditure or separately identifiable cost or specific portion of a cost incurred by the agency beyond the normal and regular expenditures or costs incurred by the agency in responding to inquiries from the media, constituents and other persons on matters unrelated to ballot propositions.

Example 1: A statewide elected official conducts a press conference in state office space. During the conference the official is asked about a ballot proposition. The subject of the ballot proposition does not fall within the normal and regular conduct of the official's agency nor within the official's constitutional or statutory responsibilities. The official replies to the question explaining his or her opinion on the ballot proposition and the reason for the opinion. It is not an ethical violation to reply to such an inquiry. The use of state office space, during the time the official answers the question about the ballot proposition, does not result in a measurable expenditure of public funds. This is because the expenditure or cost of the office space during this period is not a separately identifiable cost.

Example 2: A statewide elected official receives a letter from a constituent asking for the official's position on a ballot proposition. The subject of the ballot proposition does not fall within the normal and regular conduct of the official's agency nor within the official's constitutional or statutory responsibilities. The official replies by letter explaining his or her opinion on the ballot proposition and the reason for the opinion. In the course of preparing the reply the official has the assistance of staff and uses office space, equipment, stationery and postage. It is not an ethical violation to reply to such an inquiry. There is no measurable expenditure of public funds because the agency has not incurred a cost beyond the normal and regular costs incurred by the agency in responding to inquiries from the media, constituents and other persons on matters unrelated to ballot propositions.

Example 3: A statewide elected official received a letter from a constituent asking for the official's position on a ballot proposition. The subject of the ballot proposition does not fall within the normal and regular conduct of the official's agency nor within the official's constitutional or statutory responsibilities. The official replies by letter explaining his or her opinion on the ballot proposition and the reason for the opinion. In the course of preparing the reply the official has the assistance of staff and uses office space, equipment, stationery and postage. The official sends copies of the reply to other individuals on the agency mailing list. This is an ethical violation. While it is permissible to reply to

the constituent who inquired about the official's position (Example 1), it is improper to send copies of the response to others. There is a measurable expenditure of public funds because the cost of the paper and postage for the additional copies is a separate identifiable cost beyond the normal and regular costs incurred by the agency in responding to inquiries from the media, constituents and other persons on matters unrelated to ballot propositions.

Example 4: A statewide elected official writes a letter to the editor of a newspaper stating the official's position on a ballot proposition. The subject of the ballot proposition does not fall within the normal and regular conduct of the official's agency nor within the official's constitutional or statutory responsibilities. In the course of preparing the letter the official has the assistance of staff and uses office space, equipment, stationery and postage. This is an ethical violation. The official has used the facilities of the agency and the exception in RCW 42.52.180 (2)(b) does not apply because the official is not responding to an inquiry.

[Statutory Authority: RCW 42.52.180 (2)(b) and 42.52.360 (2)(b). 96-22-029, § 292-110-030, filed 10/30/96, effective 11/30/96.]