

Chapter 292-100 WAC

PROCEDURAL RULES

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

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| 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 Repealed by WSR 01-13-033, filed 6/13/01, effective 7/14/01.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. |
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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 adopted in this chapter, the procedural rules adopted by the board shall take precedence.

(12/20/06)

[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, the investigator, attorneys who bring cases before the board, and the training and information specialist.

(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) "Lobbying," for the purposes of RCW 42.52.380, does not include written communication by the board to members of the state legislature or to any other government official on matters pertaining directly to the Ethics in Public Service Act.

(5) "Party" includes the board staff and the respondent. The respondent may be represented in any matter filed under chapter 42.52 RCW by an attorney or an exclusive bargaining representative. If the respondent is represented by a person who is not an attorney, the representation shall conform to the standards of ethical conduct required of attorneys before the courts of the state of Washington.

(6) "Preliminary investigation" refers to the confidential fact-finding investigation that occurs before the board's determination of reasonable cause.

(7) "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.

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

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

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

(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 may file a complaint if appropriate.

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(4) Complaints initiated by the board will be signed on behalf of the board by the executive director.

[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.]

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 shall 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; however, the board staff will give notice to the complainant and the employing agency of any open board hearings on the matter.

(2) This section does affect the right to request a review of a board staff decision to dismiss complaint, pursuant to RCW 42.52.425 and WAC 292-100-045.

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

[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 Procedures for filing complaints.

(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.

(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(s) and the name of person(s) responsible and the complaint should also include 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, 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. The board or its staff may refer such allegations to an appropriate agency with jurisdiction.

[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 292-100-040 Acceptance and preliminary review of complaints. (1) Upon receiving a complaint, the board staff shall review the complaint for completeness. If a complaint is complete, it will be accepted for filing. If a complaint is incomplete, the complaint shall be returned to the complainant with a statement of the reasons the complaint has not been accepted.

(2) Once a complaint has been accepted, board staff will review the complaint, determine the extent of investigation required and determine whether the complaint may be dismissed pursuant to RCW 42.52.425 and WAC 292-100-045.

[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.]

WAC 292-100-041 Investigation of complaints. (1) If board staff determines that a complaint should not be dismissed pursuant to RCW 42.52.425 and WAC 292-100-045, the board staff shall conduct a preliminary investigation.

(2) During the course of the preliminary investigation, the board staff will give the respondent(s) a copy of the complaint or a summary thereof, and an opportunity to present such information as the respondent may desire, provided that if a complainant has requested confidentiality under chapter 42.17 RCW, the complainant's name and identifying information shall be deleted from the complaint.

(3) It is the intent of the board that board staff who are investigating a complaint will work with the respondent's employing agency, unless in the judgment of the investigator it will impede the investigation. During the course of the investigation, the board staff shall provide the employing agency with a copy of the complaint or a summary thereof. If a complainant has requested confidentiality under chapter 42.17 RCW, the complainant's name and identifying information shall be deleted from the complaint.

(4) The board staff shall reduce the results of a preliminary review or investigation to writing.

[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) The board staff may refer a complaint or a summary thereof to the employing agency 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 thirty days. If a complainant has requested confidentiality under chapter 42.17 RCW, the complainant's name and identifying information shall be deleted from the complaint. 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. The agency will provide the respondent with an opportunity to present such information as the respondent may desire.

(2) If board staff determine that a complaint alleges conduct which may violate a criminal statute, the staff may refer the complaint to the appropriate law enforcement authority and if referred, 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 shall complete their investigation and follow the procedures set forth in these rules.

[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) If after a preliminary review or investigation 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, the executive director may dismiss the complaint by issuing an order of dismissal.

(2) If the executive director dismisses the complaint, the preliminary review or investigation report and a written notice of the executive director's order of dismissal shall be provided to the complainant, respondent, and the board and shall include a statement of the complainant's right to appeal to the board. (See RCW 42.52.425.)

(3) If the board dismisses the complaint, written notice shall be provided to the complainant, respondent, and the board. (See RCW 42.52.425.)

[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) Upon the written request of the complainant, the executive director's order of dismissal will be reviewed by the board.

(2) A request for review 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.

(3) A request for review shall state the grounds therefor.

(4) When a request for review is received, the board staff shall 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 preliminary review or investigation report, as applicable;

(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.

(5) The board shall review the record and deliberate in closed session, without oral argument, and act on the request at the next meeting at which it may be practicable 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.

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

(7) The board's decision shall be reduced to writing and provided to the complainant and the respondent.

[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) Upon the written request of a board member, the executive director's order of dismissal will be reviewed by the board.

(2) The preliminary review or investigation report and a written notice of the executive director's order of dismissal shall be provided to the board at the next regular meeting.

(3) A 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.

(4) When a request for review is received, the board staff shall 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 preliminary review or investigation report, as applicable;

(c) The order of dismissal;

(d) Any additional material requested by the chair or the board member who requested the review.

(5) The board shall review the record, consider the request in executive session, and act on the request at the next meeting at which it may be practicable 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.

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

[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 the preliminary 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 potential penalty should 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 and whether any potential penalty should be greater than \$500.

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

(4) If after determining reasonable cause, the board further determines that the penalty and costs should be greater than \$500, the respondent shall 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 penalty and costs 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 employing agency 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 to the employing agency for implementation of the recommendation if the recommendation is within the agency's authority to implement. The agency shall report implementation to the board and the board shall dismiss the complaint; or

(c) Concur with the report and recommendation, enter a finding of no reasonable cause and dismiss the complaint; or

(d) Concur with the report and recommendation, consider the report an investigative report, enter a finding of reasonable cause, and proceed under this section.

[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 shall provide the complainant, the respondent and the employing agency with a copy of the written determination on reasonable cause and 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 and costs for the alleged violation may be greater than \$500.

(2) Within 30 days of service of the written determination on reasonable cause, the respondent shall file an answer to the written determination on reasonable cause 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 and costs for the alleged violation may be greater than \$500.

(3) Failure to file an answer to the written determination on reasonable cause 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 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) Within 30 days of service of the written determination on reasonable cause, the respondent shall have the right to request an administrative law judge if the penalty and costs for the alleged violation may be greater than \$500. If the respondent fails to request an administrative law judge within 30 days, the right to have the matter presided over by an administrative law judge is waived. If the respondent does not request an administrative law judge within 30 days and has not defaulted pursuant to this section, the board staff may, at its option, commence an adjudicative proceeding to resolve the matter.

(6) The respondent shall be notified of the date of the hearing no later than 20 days before the hearing date.

[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, a board member, or the executive director, 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) Require the production of information at a reasonable place and time, but no later than ten 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. 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: 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 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 board staff in writing.

(b) If settlement may be accomplished by negotiation, negotiations shall be commenced at the earliest possible time. When board staff and the respondent agree that some or all of

the facts are uncontested and a stipulation of the facts is reached, board staff is responsible for providing a written description of the recommended resolution or stipulation to the person(s) involved.

(c) If settlement of a hearing may be accomplished by informal negotiation, negotiations may be concluded by:

- (i) Stipulation of facts by the parties; or
- (ii) Stipulation of facts, conclusions and penalty by the parties.
- (iii) A stipulated order agreed to by the parties.

(d) Board staff shall only present proposed stipulations and settlements to the board which it recommends the board adopt.

(2) Any proposed stipulation shall be in writing and signed by each party to the stipulation and his or her attorney, if represented. The stipulation may 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: 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—Rule. (1)

In any proceeding, the presiding officer upon his/her own motion or upon request by board staff or the respondent or their counsel, may direct the board 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;
- (e) Authorizing discovery by any party;
- (f) Scheduling order; and
- (g) Procedural and such other matters as may aid in the disposition of the proceeding.

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

(3) 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: 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:

(12/20/06)

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 shall consider the party's need for discovery while ensuring that discovery does not unduly delay the hearing. If the determination of reasonable cause includes an allegation that the respondent has violated RCW 42.52.180, the presiding officer shall permit discovery by the parties. Prior to the appointment of a presiding officer, the chair or other member designated by the board may authorize discovery if the party can demonstrate a compelling reason why discovery must be conducted prior to the appointment of a presiding officer.

[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) The board, a board member, or the executive director 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 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 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: 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 shall be taken

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only in accordance with this rule and the rules on subpoenas, except that board staff and the respondent may stipulate to other arrangements.

[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 desiring to take the deposition of any person upon oral examination shall 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 (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. 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 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 presiding officer 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 presiding officer may order the party 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 presiding officer. 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: 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 shall be provided to the executive director and to the opposing party no less than ten days prior to the hearing.

(2) Upon agreement by both parties, additional documentary evidence may be presented at the hearing. The parties shall 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 ten 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 shall, 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 ten 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 (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 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 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, he or she shall rule on procedural and evidentiary matters. 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.

(3) Following a hearing in which the board participates, the board 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.

(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 serve each party, the complainant and the employing agency, 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 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 (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 shall become the final order of the board within forty-five 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 thirty days of the entry of the initial order.

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

(3) Petitions for review shall be filed with the executive director and served on all other parties. The party not filing the petition for review shall have twenty days to reply to the petition for review. The reply shall be filed with the executive director and copies of the reply shall be served on all other parties or their counsel at the time the reply is filed, and may cross-petition for review. If the reply contains a cross-petition, it shall specify portions of the initial order to which exception is taken by the replying party, and shall refer to the evidence of the record relied upon to support the reply.

(4) The board shall personally consider the whole record or such portions of it as may be cited by the parties.

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

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

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

[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) Five days after receiving an initial order by an administrative law judge the executive director shall serve a copy of the initial order upon each board member.

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

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

(4) The board shall personally consider the whole record or such portions of it as may be required for its deliberation.

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

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

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

[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 and notwithstanding the provision of WAC 292-100-050 through 292-100-170, 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 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 (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) When a violation is alleged, before taking action, the executive director shall send the alleged violator notice, which shall 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) Person's right to respond, within twenty 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 no longer meet the criteria in WAC 292-100-180, the presiding officer shall immediately adjourn the brief adjudicative proceeding and direct the matter to be scheduled for a public 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 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 shall be the final order.

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[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 twenty 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: 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 ten days of the service of a final order, any party may file a petition for reconsideration as provided in RCW 34.05.470.

(2) Any party may make a motion for reconsideration of a final order of the board as provided in RCW 34.05.470. The request for reconsideration shall be filed at the office of the board and served on the parties no later than ten days after service of the final order. A request or motion for reconsideration shall specify the grounds therefor.

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

[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.]

WAC 292-100-220 Effective date. When WAC 292-100-007 through 292-100-210 go into effect, they will apply to all pending cases.

[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.]