



**State of Washington
PUBLIC DISCLOSURE COMMISSION**

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908
(360) 753-1111 • FAX (360) 753-1112

Toll Free 1-877-601-2828 • E-mail: pdc@pdc.wa.gov • Website: www.pdc.wa.gov

June 1, 2021

THE KUSHERY
18026 SR 9 STE B
SNOHOMISH WA 98296

Also delivered electronically to thekushery502@gmail.com

Subject: L-3 Brief Enforcement Hearing Notice; PDC Case Number 91611

Dear THE KUSHERY:

The Public Disclosure Commission (PDC) has not received your Lobbyist Employer's Annual Report (L-3 report) for calendar years 2019 & 2020, which were due on or before March 2, 2020 and March 1, 2021 respectively. RCW 42.17A.630 requires every lobbyist employer to file an L-3 report for each year in which it employed a lobbyist.

In accordance with RCW 42.17A.110 and RCW 42.17A.755, a Brief Adjudicative Proceeding (Brief Enforcement Hearing) has been scheduled to determine if you violated RCW 42.17A.630 by failing to file the required L-3 reports for calendar years 2019 & 2020. Under the Brief Enforcement Hearing rules, the Presiding Officer has the authority to assess a civil penalty in accordance with WAC 390-37-143, a Brief Enforcement Hearing penalty schedule adopted by the Commission (see enclosed copy).

HEARING INFORMATION

Date and time: **July 1, 2021 at 12:30 p.m.**
Place: Remotely from Olympia
Live Audio and Online Transmission
Presiding Officer: Fred Jarrett, Chair, Public Disclosure Commission

HOW TO AVOID THE HEARING

In order to avoid the Brief Enforcement Hearing, please ensure that the following items are **received** by the PDC no later than **12:00 p.m. Wednesday, June 23, 2021**:

1. Completed L-3 reports for 2019 & 2020, filed electronically (instructions enclosed);
2. A signed *Statement of Understanding* (blank copy enclosed); and
3. A check or money order for \$200 total (\$100 per report) for the late filed L-3 reports, made payable to "Washington State Treasurer"

Mail the signed *Statement of Understanding* and payment to the following address:

**Public Disclosure Commission
PO Box 40908
Olympia, WA 98504-0908**

(Any *Statement of Understanding* or payment received after the June 23, 2021 deadline will be returned.)

PARTICIPATING BY TELEPHONE

The Brief Enforcement Hearing will be audio and video recorded. The Presiding Officer and staff will join the meeting remotely.

Anyone wishing to participate in the hearing by telephone must follow the instructions below and call into the meeting **promptly at 12:15 p.m. on Thursday, July 1, 2021**. Please stay on the call until the Presiding Officer calls your name and case number. After your case has been heard, you may hang up or stay on the call. *Please note that you must keep your phone on mute at all times except while your case is being heard.* Use *6 to mute your phone and *6 again to unmute when it is your turn to speak.

Join on your telephone by dialing:

+1 206-809-2388 United States, Seattle

Follow the verbal prompts and enter the Phone Conference ID: 956 142 386#

Use *6 on your telephone keypad to mute your call and use *6 again to unmute your phone when it is your turn to speak.

If you experience technical difficulties with the call-in participation after the meeting has started at 12:30 p.m., call the PDC's main number 1-360-753-1111 and staff will try to assist you.

INTERPRETER

If a party or witness to this proceeding speaks limited English or is hearing-impaired, and needs an interpreter, a qualified interpreter will be appointed at no cost to you. Please inform us at least five business days before the hearing or no later than **Wednesday, June 23, 2021** if you require an interpreter for this proceeding and/or translation of its written materials in a language other

than English. Please contact us by email at pdc@pdc.wa.gov or call us at (360) 753-1111 or 1-877-601-2828 to request an interpreter.

SUBMITTING WRITTEN MATERIALS

In advance of the Brief Enforcement Hearing, you may provide a written response describing the facts of your case for consideration by the Presiding Officer, including any circumstances or mitigating factors you would like considered. Please submit your written response so it is received by no later than 12:00 p.m. Wednesday, June 23, 2021.

If you have any questions about the hearing process prior to the hearing date, please contact PDC Staff by email at pdcc@pdc.wa.gov – and be sure to reference your case number in the subject line of the email.

Sincerely,

PDC Staff
Compliance and Enforcement Division

Enclosures

- Instructions for Completing the Lobbyist Employer's Annual Report (L-3 report)
- Statement of Understanding
- Brief Enforcement Hearings FAQ
- PDC Penalty Schedule



Instructions for Completing the Lobbyist Employer's Annual Report (L-3 report)

Reporting

Report expenses and compensation on an accrual basis. That is, include expenses on the report for the year in which they were incurred or earned, not when they were actually paid or received.

L-3 Employer's Lobbying Expenses

Due Date: Last day of February

Shows lobbyist's expenses and compensation. Includes employer's expenditures on behalf of lobbyist to assist in the lobbying effort. All submissions must be done through the lobbyist/lobbyist employer electronic application. <https://accesshub.pdc.wa.gov/user/>

Completing the Employer's Lobbying Expenses (L-3) Report

This report captures all reportable lobbying expenses incurred during a calendar year and is required of all employers of lobbyists registered during any portion of the preceding year, whether or not there is any reportable activity to disclose. All reportable lobbying expenditures incurred during the year are disclosed, not simply those reported by the lobbyist(s). All expenditures reported by the lobbyist on monthly reports are disclosed as a lump sum. Any expenditures not reported by the lobbyist are itemized. Take care not to duplicate expenditures.

All L-3 submissions are required to be filed electronically using the online application available at the PDC website.

File a "zero" L-3 report if no lobbying compensation and other reportable lobbying expenditures were paid or incurred during the year and the registration was in effect.

Include expenses that were incurred or earned, regardless of whether they have been paid.

Expenditures exempt from reporting:

- i. unreimbursed personal living and travel expenses unless they are directly for lobbying,
- ii. expenses for personal living accommodations (whether they are for maintenance of the lobbyist's home or for rented or leased accommodations, including hotel and motel rooms),
- iii. personal travel expenses to hearings of the legislature * (e.g., mileage, vehicle rentals, other transportation, meals, beverages, laundry, parking, toiletry purchases, etc.),
- iv. telephone and facsimile expenses,
- v. office expenses, including rent,
- vi. support staff expenses, including salaries, unless the staffer lobbies, and
- vii. expenses to produce reports, documents and other communications primarily designed for other purposes and distributed incidentally as part of the lobbying effort.

* "Hearings of the legislature" means any regular or special session of the state legislature or any publicly announced meeting of a standing, conference, joint or special committee of either house of the legislature. Travel for other lobbying purposes, such as for meetings with individual legislators or staff, state agency hearings or to attend political fund raisers, etc., is reportable.

When completing reports, neither the lobbyist nor the employer should include any exempt expenses.

Completing the Employer's Lobbying Expenses (L-3) Report: Overview

Remember, an annual report is due if the employer had a registration for any lobbyist/firm, for any period of the year, regardless of activity level.

1. Login to the Lobbyist Electronic Filing system using your user account.
2. Under **Employers I File For**, choose the name of the employer who the expenditure report will be filed for.
3. On the page for the employer, find the **Employer Menu** and choose the **New** annual filing option.
4. On the following page, entitled **Create a new L-3 Report**, use the dropdown under **Choose your reporting period** to select the appropriate period you want to file for. Once you have chosen the period, click the **Save** icon.
5. In the following screen there are a series of tabs listing different categories of lobbying activities. Review information on each tab where you will indicate, through a series of yes or no questions, whether you have reportable activity. If there is activity, continue on that tab to provide the requested information.
6. Once you have completed all tabs and are ready to submit, click the **Submit to PDC** icon at the bottom of the screen. The report will now validate for errors or incomplete entries. If this happens, return to the tab in question to correct or enter the information and then re-submit. You will now see the report you have just completed listed under the heading **Submitted Annual Reports (L3)** with the date and time submitted.

Completing the Employer's Lobbying Expenses (L-3) Report: Detailed Instructions

Report compensation and expenses on an accrual basis. That is, report them for the year in which each was incurred, not necessarily when paid.

Identify the employer

- Log in to the **Lobbyist Employer Electronic Filing** system using your user account.
- Under **Employers I File For**, choose the name of the employer who the expenditure report will be filed for.

Identify the reporting period

- On the following page, entitled **Create a new L3 Report**, use the dropdown under **Choose your reporting period** to select the appropriate period you want to file for.
- Once you have chosen the period, click the **Save** icon.

In the application you will now see a series of tabs which require completion. Below are details about each tab and the information contained on each.

Personal

On this tab, verify the contact name of the person completing the report. Enter the calendar year that the report covers.

Lobbyist

Listed on this tab are the total salary and fees reported by all registered lobbyists. These numbers are auto filled from the lobbyists/lobbyist firms monthly expense reports (L-2). The total amount you disclose for each lobbyist should closely approximate the total amount reported by the lobbyist as having been earned, received or due from you, assuming each of you is accurately disclosing only reportable compensation and expenditures.

It must also be noted, however, that the figures you report should not be a recapitulation of what the lobbyist reported; your records must support the amounts shown on your report. Verify that these numbers are correct and proceed to the next tab.

If the numbers are not correct, indicate that as well. You will then indicate the name of the lobbyist/firm with the incorrect information, using the dropdown as well as your revised compensation and expense figures. Once you have done so, the lobbyist will be contacted electronically to review the numbers you have provided so they may amend reports as necessary.

Contributions

Reportable employer contributions include:

- campaign contributions to candidates for statewide and legislative office,
- contributions to political party organizations and other political committees,
- tickets to fund raisers, including caucus political committee events,
- contributions to political committees supporting or opposing a state ballot proposition,
- in-kind contributions of staff assistance, office space, equipment, postage and copying services,
- donation or use of goods or services for less than fair market value,
- forgiveness of a debt,
- loans to a candidate or political committee, and
- campaign contributions from affiliated subsidiary or parent corporations, if the contribution was made at the request or direction of the lobbyist employer.

The term "**candidate for state office**" includes a candidate for governor, lieutenant governor, secretary of state, attorney general, state auditor, state treasurer, superintendent of public instruction, commissioner of public lands, insurance commissioner, state senator, and state representative.

"**State ballot proposition**" means any initiative to the people, recall of a state elected official, referendum or other measure to be submitted to the voters of the entire state. Any ballot measure required to be filed with the Secretary of State and voted on by all voters of the state is a state ballot proposition.

(Note that lobbyists who deliver or transmit contributions from any source, including an employer affiliated political committee, must itemize those contributions on his or her L-2 report.)

Report the total amount of contributions -- *not otherwise reported by your lobbyist* -- made by the employer directly to a candidate for state office, or to political committees supporting or opposing candidates for state office or to political committees supporting or opposing statewide ballot propositions in the **Political contributions** field.

Include all other contributions previously reported on PDC Form L-3c. as an aggregate figure in the **Aggregate total of all non-itemize political contributions** field.

If the employer has an affiliated political committee which made contributions, answer "Yes" to this question and enter the name of the committee in the **List the affiliated PACs that made contributions field**. A PAC is connected, related to, or closely affiliated with a lobbyist employer if the employer provides a substantial portion of the funds used by the PAC; provides funds or personnel to establish, direct or administer the committee; assists in the solicitation and collection of contributions from PAC members; has as members of the PAC primarily employees, stockholders or members of the firm, association, union or organization; employs or controls activities of the PAC officers or directors; or similarly exercises control over the contributions received and expenditures made by the PAC. If an employer merely belongs to an association, union or organization that has a PAC, and the employer makes contributions to that PAC, these facts alone do not make that PAC connected, related or closely affiliated with the employer.

Contributions made by a political committee associated, affiliated or closely connected with the employer are not reported on the L-3, but rather are shown on the PAC's campaign disclosure reports.

Independent Expenditures

On this tab the employer will report independent expenditure activity in the following categories: independent expenditure expenses to support or oppose legislative or state executive candidates, and expenses supporting or opposing a statewide ballot proposition.

Expenditures

On this tab the employer will report the following, if applicable:

- **Entertainment expenses:** Report expenditures made to entertain, to provide gifts, travel or enrollment of course fees for legislators, state officials, state employees and members of their immediate families that exceeds \$50. Also include the value of transportation in employer-owned vehicles or aircraft.
- **Itemized expenditures that were for the purpose of influencing, honoring or benefiting a legislator or official:** Report expenditures to honor, influence or benefit state elected officials, successful candidates for state office or their family members. Include honoraria, speaker's fees, payment of medical bills or office staff or equipment, as well as any contracts and fees given to state officials, successful state office candidates or their immediate family members on a selective basis.
- **Other lobbying-related expenditures:** Report expenditures made or incurred for other reportable lobbying expenses not included in any other section of this expense report. Example: A lobbyist employer (independent of the lobbyist) makes a contribution to a charitable or civic organization at the request or suggestion of a public official.
- **Other expenditures made by the employer:** Report payments to vendors, expert witnesses, cost to compose and grassroots lobbying.

Other Compensation

On this tab, the employer will report the following, if applicable: employment compensation paid to state elected officials or successful candidates, and payments for professional services in which a state elected official, successful candidate for a state office or a member of the official's or candidate's immediate family holds an office or ownership interest of 10% or more. (Do not include the names of companies or organizations from which the employer purchased goods or tangible products in the normal course of business at fair market value).

Submitting the L3 report

Once all questions on each tab have been answered and the appropriate information supplied, the report may be submitted by clicking the **Submit to PDC** icon.

Amending Reports

Although every effort should be made to file complete and accurate reports, mistakes do happen. If you discover an omission or mistake in a previous report that affects the computations on the L-3 report, file an amended report.

Amend the L-3 report as follows:

- Log into the lobbyist/lobbyist employer account.
- Under **Employers I File For**, find the employer name and click on it.
- When the home page for the employer displays, find the report in question under **Submitted Annual Reports (L3)** and click on **Amend** at right.
- Make the appropriate changes as needed and submit to PDC.

Amended L-3 reports should be filed as soon as the error is discovered

Public Disclosure Commission Statement of Understanding
THE KUSHERY: PDC Case 91611

I hereby acknowledge that I, _____,
(Printed Name of Respondent)

did not timely file the required Lobbyist Employer's Annual Report (L-3 report) with the Public Disclosure Commission (PDC) that was due to be filed on or before March 2, 2020, disclosing lobbying activity for calendar year 2019; and the L-3 report that was due to be filed on or before March 1, 2021, disclosing lobbying activity for calendar year 2020, thereby violating RCW 42.17A.630.

I want to avoid the time and expense resulting from a Brief Adjudicative Hearing (Brief Enforcement Hearing) before the Presiding Officer. Therefore, I am filing the L-3 reports, completing the *Statement of Understanding*, and enclosing a check or money order in the amount of \$200 total (\$100 for each late filed report) in lieu of a July 1, 2021 Brief Enforcement hearing being held.

I understand that this will resolve all issues with the PDC regarding my failure to timely file the L-3 reports, provided that a check or money order for \$200, my missing reports are completed on-line, and this signed *Statement of Understanding* are all received by **Wednesday, June 23, 2021.**

I further understand that Commission staff will not be scheduling a Brief Enforcement hearing before the Presiding Officer regarding my obligation to timely file the L-3 reports that were due on or before March 2, 2020 and March 1, 2021.

Signature of Respondent

Date Signed

Be sure to certify and submit your L-3 report on-line, and make your check or money order payable to "Washington State Treasurer" and mail this *Statement of Understanding*, and your \$200 payment to the following address:

Public Disclosure Commission
PO Box 40908
Olympia, WA 98504-0908

BRIEF ENFORCEMENT HEARINGS – INFORMATION FOR FILERS

You have received a letter or email from the PDC scheduling a Brief Enforcement Hearing before a PDC Commissioner. Here are the answers to some Frequently Asked Questions about these brief hearings. This FAQ is informational only and should not be considered legal advice.

What is a Brief Enforcement Hearing?

The PDC is responsible for enforcing the State's campaign finance laws. We may schedule what is called a Brief Enforcement Hearing (also known as a "Brief Adjudicative Proceeding" under the Administrative Procedure Act) to address compliance with campaign finance reporting requirements when evidence shows the following types of alleged violations may have occurred:

- Failure to file or timely file required reports of financial affairs, campaign contributions and/or expenditures, independent expenditures, or funds spent on lobbying;
- Improper use of public facilities or resources in election campaigns when the value of public funds expended or facilities used was minimal; and
- Infractions of political advertising laws regarding sponsor identification or political party identification.

Brief Enforcement Hearings may be scheduled on other matters as well, if the basic facts are agreed to or are not being contested, and it is anticipated that the likely penalty imposed (if a violation is found) will be \$1,000 or less. The Commission has adopted a penalty schedule for Brief Enforcement Hearings which can be found in the Washington Administrative Code [WAC 390-37-143](#).

A Presiding Officer, who is a PDC Commissioner, will conduct the hearing. PDC staff will present the case to the Presiding Officer, and you will have an opportunity to explain the circumstances related to the alleged violations. You may do this in person, by telephone, or in writing by email or letter.

Who are the parties involved?

The PDC Staff initiates and investigates possible violations, and brings cases forward to the Commission or its Presiding Officer. The person who is alleged to be out of compliance with the law is referred to as the "Respondent."

What can I do to avoid the hearing?

If you received a hearing notice, you still have the opportunity to come into compliance by filing the missing report(s), paying the stated penalty, and completing a Statement of Understanding stipulating to the violation(s). If you would like to take this approach, please contact PDC Compliance and Enforcement Staff at pdcc@pdc.wa.gov

What do I do to prepare for the hearing?

The brief hearings are informal in nature. You are not required to have an attorney for this hearing. Hearings take place remotely from Olympia, WA by live audio and online transmission. You need to let the Staff know at least five business days before the hearing whether you will be participating by phone or prefer not to participate.

If you are having other people (witnesses) testify on your behalf, they must be available at the hearing, and Staff needs to be informed of the number of witnesses and time needed for their testimony when you notify the Staff of your participation. The scheduled hearing starting time is the start time for several matters that will be heard by the Presiding Officer, and your case may not be the first one heard. So you will need to remain available to participate until your case is called.

Waiving your right to participate. If you have submitted nothing in writing prior to the hearing, have made no other arrangements, and you do not appear by phone, or through your legal counsel at the hearing, it will be presumed that you have decided to waive your right to participate at the hearing.

What happens at the hearing?

The Presiding Officer will introduce the participants and explain the procedure for the hearing. The hearing will be audio-taped.

The Presiding Officer will swear-in PDC Staff for them to present information regarding the alleged violation of law. You will then have an opportunity to testify, which is your opportunity to present information. All testimony by Staff, Respondents, and witnesses is given under oath. The Presiding Officer may ask you some questions about the information you, PDC Staff, or witnesses have presented. If you have decided to participate in writing instead of by phone, your written information will be considered by the Presiding Officer as part of the hearing materials.

If at any time the Presiding Officer believes the alleged violations are serious enough to merit penalties greater than \$1,000, the Presiding Officer will adjourn the hearing and direct that the matter be scheduled for a hearing before the full Commission at a later time.

How is the decision made?

After considering all the information presented at the hearing, the Presiding Officer will make a decision about the allegation(s) and any appropriate penalty amount. The decision is typically announced orally at the hearing.

The Presiding Officer will use the penalty schedule referred to above that has been adopted by the Commission in rule to determine the appropriate penalty for certain types of violations, taking into account aggravating and mitigating factors. The penalty schedule is below.

What happens after my hearing?

A written decision, called an Initial Order, laying out the Presiding Officer's ruling, including the findings and the penalty, will be sent to you. The PDC tries to get orders issued within 10 days if possible, and not later than 30 days. If a monetary penalty is imposed in the Initial Order, the penalty must be paid to the **Washington State Treasurer**, and mailed to the address listed in the Order cover letter within the time frame stated in the Order.

Along with your Initial Order, you will also receive information about your appeal rights, including how to request review or reconsideration by the full Commission if you disagree with the Initial Order. Follow these procedures carefully if you wish to appeal. If there is no appeal before the PDC, the Initial Order becomes a Final Order, and further appeals must be made in Superior Court.

What are the rules that apply to the procedures of my hearing?

The PDC's laws and rules are available on the PDC's website at www.pdc.wa.gov. The laws are in the Revised Code of Washington ([RCW Chapter 42.17A](#)). The rules are in the Washington Administrative Code ([WAC Title 390](#)). Brief Adjudicative Proceedings are described at [WAC 390-37-140](#) through [390-37-150](#) and in the Administrative Procedure Act (APA) at [RCW 34.05.482-494](#).

Penalty Schedule [\[WAC 390-37-143\]](#):

The Presiding Officer may assess a penalty up to one thousand dollars upon finding a violation of chapter [42.17A](#) RCW or Title 390 WAC.

(1) Base penalty amounts:

Violation	1st Occasion	2nd Occasion	3rd Occasion
Failure to timely file an accurate and complete statement of financial affairs (F-1):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150	\$150 - \$300	\$300 - \$600
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150	\$300	\$600
Failed to file report by date of enforcement hearing.	\$250	\$500	\$1,000
Candidate's failure to timely file an accurate and complete registration statement (C-1)/statement of financial affairs (F-1):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150 per report	\$150 - \$300 per report	\$300 - \$600 per report up to \$1,000
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150 per report	\$300 per report	\$600 per report up to \$1,000
Failed to file report by date of enforcement hearing.	\$250 per report	\$500 per report	consideration by full commission
Failure to timely file an accurate and complete lobbyist monthly expense report (L-2):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150	\$150 - \$300	\$300 - \$600
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150	\$300	\$600
Failed to file report by date of enforcement hearing.	\$250	\$500	\$1,000
Failure to timely file an accurate and complete lobbyist employer report (L-3):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150	\$150 - \$300	\$300 - \$600

Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150	\$300	\$600
Failed to file report by date of enforcement hearing.	\$250	\$500	\$1,000
Failure to timely file accurate and complete disclosure reports:			
Political committee registration (C-1pc).	\$150	\$300	\$600
Statement of contributions deposit (C-3).	\$150	\$300	\$600
Summary of total contributions and expenditures (C-4).	\$150	\$300	\$600
Independent expenditures and electioneering communications (C-6).	\$150	\$300	\$600
Last minute contribution report (LMC).	\$150	\$300	\$600
Out-of-state committee report (C-5).	\$150	\$300	\$600
Annual report of major contributors (C-7).	\$150	\$300	\$600
Failure to timely file accurate and complete reports disclosing lobbying activities:			
Lobbyist registration (L-1).	\$150	\$300	\$600
Public agency lobbying report (L-5).	\$150	\$300	\$600
Grass roots lobbying report (L-6).	\$150	\$300	\$600
Failure to file electronically.	\$350	\$650	\$1,000
Exceeding contribution limits.	\$150	\$300	\$600
Exceeding mini reporting threshold.	\$150	\$300	\$600
Failure to comply with political advertising sponsor identification requirements.	\$150	\$300	\$600
Failure to include required candidate's party preference in political advertising.	\$150	\$300	\$600
Failure to comply with other political advertising requirements, RCW 42.17A.330 through 42.17A.345 .	\$150	\$300	\$600
Use of public facilities to assist a campaign for election or promote a ballot measure.	\$150	\$300	\$600
Treasurer's failure to timely file an accurate and complete annual treasurer's report (T-1):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150	\$150 - \$300	\$300 - \$600
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150	\$300	\$600

Failed to file report by date of enforcement hearing.	\$250	\$500	\$1,000
---	-------	-------	---------

"Occasion" means established violation. Only violations in the last five years will be considered for the purpose of determining second and third occasions.

(2) In determining the appropriate penalty, the presiding officer may consider the nature of the violation and aggravating and mitigating factors, including:

(a) Whether the respondent is a first-time filer;

(b) The respondent's compliance history for the last five years, including whether the noncompliance was isolated or limited in nature, indicative of systematic or ongoing problems, or part of a pattern of violations by the respondent, or in the case of a political committee or other entity, part of a pattern of violations by the respondent's officers, staff, principal decision makers, consultants, or sponsoring organization;

(c) The respondent's unpaid penalties from a previous enforcement action;

(d) The impact on the public, including whether the noncompliance deprived the public of timely or accurate information during a time-sensitive period, or otherwise had a significant or material impact on the public;

(e) The amount of financial activity by the respondent during the statement period or election cycle;

(f) Whether the late or unreported activity was significant in amount or duration under the circumstances, including in proportion to the total amount of expenditures by the respondent in the campaign or statement period;

(g) Corrective action or other remedial measures initiated by respondent prior to enforcement action, or promptly taken when noncompliance brought to respondent's attention;

(h) Good faith efforts to comply, including consultation with PDC staff prior to initiation of enforcement action and cooperation with PDC staff during enforcement action, and a demonstrated wish to acknowledge and take responsibility for the violation;

(i) Personal emergency or illness of the respondent or member of his or her immediate family;

(j) Other emergencies such as fire, flood, or utility failure preventing filing;

(k) Sophistication of respondent or the financing, staffing, or size of the respondent's campaign or organization; and

(l) PDC staff, third-party vendor, or equipment error, including technical problems at the agency preventing or delaying electronic filing.

(3) The presiding officer has authority to suspend all or a portion of an assessed penalty under the conditions to be determined by that officer including, but not limited to, payment of the nonsuspended portion of the penalty within five business days of the date of the entry of the order in that case.

(4) If, on the third occasion, a respondent has outstanding penalties or judgments, the matter will be directed to the full commission for consideration.

(5) The presiding officer may direct a matter to the full commission if the officer believes one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission. Cases will automatically be scheduled before the full commission for an enforcement action when the respondent:

- (a) Was found in violation during a previous reporting period;
- (b) The violation remains in effect following any appeals; and
- (c) The person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

[Statutory Authority: RCW [42.17A.110](#)(1) and 2018 c 304. WSR 18-24-074, § 390-37-143, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW [42.17A.110](#)(1) and [42.17A.570](#). WSR 18-10-088, § 390-37-143, filed 5/1/18, effective 6/1/18. Statutory Authority: RCW [42.17A.110](#). WSR 17-03-004, § 390-37-143, filed 1/4/17, effective 2/4/17.]