

WAC 480-07-310 Ex parte communication. (1) **General.** RCW 34.05.455 and this section govern ex parte communications. After an adjudicative proceeding begins and before a final resolution of the proceeding, no person who has a direct or indirect interest in the outcome of the proceeding, including the commission's advocacy or investigative staff, may directly or indirectly communicate about the merits of the proceeding with the commissioners, the administrative law judge assigned to the adjudication, or the commissioners' assistants, advisory staff, legal counsel, or consultants assigned to advise the commissioners in that proceeding, unless reasonable notice is given to all parties to the proceeding so that they may participate in, or respond to, the communication.

(2) **Communications not considered ex parte for purposes of this section.** The following communications are not considered ex parte:

(a) *Procedural aspects.* Communications concerning procedural aspects of the proceeding, such as scheduling, are not ex parte communications prohibited by RCW 34.05.455, or by this section.

(b) *Commissioners, commission employees, and consultants.* As presiding officers, commissioners and administrative law judges may receive legal counsel or consult with assistants, advisory staff, or consultants who are subject to the presiding officer's supervision or who have not participated in the proceeding in any manner, and who are not engaged in any investigative or advocacy functions in the same or a factually related case. The presiding officers and these assistants, advisory staff, and consultants also may communicate with one another regarding the merits of any adjudicative proceeding.

(3) **Communication prior to service as presiding officer.** If, before serving as presiding officer in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while serving in that capacity, the presiding officer, after starting to serve, must promptly disclose the communication as prescribed in subsection (4) of this section.

(4) **What is required if an ex parte communication occurs.** A presiding officer who receives or becomes aware of any communication that appears to violate RCW 34.05.455 or this section will include documentation of the communication in the record of the pending matter. Such documentation will include any written communication received and any written response, or a memorandum stating the substance of any oral communication received and response made, as well as the identity of each person involved in the communication. The presiding officer will notify all parties that this documentation has been included in the record and will provide parties with the opportunity to file and serve a written rebuttal statement in response to the notice of ex parte communication. Materials pertaining to ex parte communications or rebuttal statements do not constitute evidence of any fact at issue in the proceeding unless a party moves to admit any portion of them into the evidentiary record for purposes of establishing a fact at issue and the commission admits that portion into the record pursuant to RCW 34.05.452.

(5) **Sanctions.** The commission may prescribe appropriate sanctions, including default, for any violation of RCW 34.05.455 or this section. The commission or any party may report a violation of this section to appropriate authorities for any disciplinary proceedings provided by law.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-310, filed 2/28/17, effective 3/31/17; WSR

03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-310,
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