

Chapter 292-09 WAC

AGENCY PROCEDURAL RULES

WAC

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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 *Commission On Judicial Conduct Rules of Procedure (CJCRP)*, 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 the *CJCRP*.

[Statutory Authority: RCW 42.52.370 and Art. IV, § 31 of the state Constitution. WSR 97-13-069, § 292-09-010, filed 6/18/97, effective 7/19/97; WSR 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 Art. IV, § 31 of the state Constitution. WSR 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 Art. IV, § 31 of the state Constitution. WSR 95-05-031 (Order 95-01), § 292-09-030, filed 2/8/95, effective 3/11/95.]

(11/15/05)

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.

"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 spec-

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ified 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: Art. IV, § 31 of the state Constitution, RCW 42.52.370, and chapter 2.64 RCW. WSR 02-01-041 (Order 01-01), § 292-09-040, filed 12/11/01, effective 1/15/02. Statutory Authority: RCW 42.52.370 and Art. IV, § 31 of the state Constitution. WSR 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 commission 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 commission may refer a complaint to the employing agency, the attorney general, or the prosecutor.

[Statutory Authority: Art. IV, § 31 of the state Constitution, RCW 42.52.370, and chapter 2.64 RCW. WSR 02-01-041 (Order 01-01), § 292-09-050, filed 12/11/01, effective 1/15/02. Statutory Authority: RCW 42.52.370 and Art. IV, § 31 of the state Constitution. WSR 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 commission 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: Art. IV, § 31 of the state Constitution, RCW 42.52.370, and chapter 2.64 RCW. WSR 02-01-041 (Order 01-01), § 292-09-060, filed 12/11/01, effective 1/15/02. Statutory Authority: RCW 42.52.370 and Art. IV, § 31 of the state Constitution. WSR 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 Art. IV, § 31 of the state Constitution. WSR 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 Art. IV, § 31 of the state Constitution. WSR 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 Art. IV, § 31 of the state Constitution. WSR 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 Art. IV, § 31 of the state Constitution. WSR 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 Art. IV, § 31 of the state Constitution. WSR 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 Art. IV, § 31 of the state Constitution. WSR 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 Art. IV, § 31 of the state Constitution. WSR 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, 210 11th Avenue SW, #400, Olympia, WA 98504 or 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: Art. IV, § 31 of the state Constitution, RCW 42.52.370, and chapter 2.64 RCW. WSR 05-23-069 (Order 05-02), § 292-09-140, filed 11/15/05, effective 12/16/05. Statutory Authority: RCW 42.52.370 and Art. IV, § 31 of the state Constitution. WSR 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 Art. IV, § 31 of the state Constitution. WSR 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 Art. IV, § 31 of the state Constitution. WSR 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 Art. IV, § 31 of the state Constitution. WSR 95-05-031 (Order 95-01), § 292-09-170, filed 2/8/95, effective 3/11/95.]