

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.]