

Chapter 391-08 WAC

RULES OF PRACTICE AND PROCEDURE—PUBLIC EMPLOYMENT RELATIONS

COMMISSION

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WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

391-08-103 Service of process—Additional time after service by mail. [Order 77-1, § 391-08-103, filed 1/27/77.]

Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-08-105 Service of process—Extension of time. [Order 77-1, § 391-08-105, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84.

Statutory Authority: RCW 34.04.022, 41.58.050,
41.56.090, 41.59.110 and 28B.52.080.

391-08-110 Service of process—By whom served. [Order 77-1, §
391-08-110, filed 1/27/77.] Repealed by WSR 90-06-
070, filed 3/7/90, effective 4/7/90. Statutory
Authority: RCW 41.58.050, 28B.52.080, 41.56.090,
41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59,
49.08 and 53.18 RCW.

391-08-130 Service of process—Method of service. [Order 77-1, §
391-08-130, filed 1/27/77.] Repealed by WSR 83-24-
031 (Order 83-01), filed 12/1/83, effective 1/1/84.
Statutory Authority: RCW 34.04.022, 41.58.050,
41.56.090, 41.59.110 and 28B.52.080.

391-08-140 Service of process—Completion of service on parties.
[Order 77-1, § 391-08-140, filed 1/27/77.] Repealed
by WSR 83-24-031 (Order 83-01), filed 12/1/83,
effective 1/1/84. Statutory Authority: RCW

34.04.022, 41.58.050, 41.56.090, 41.59.110 and
28B.52.080.

391-08-150 Service of process—Filing with agency. [Order 77-1,
§ 391-08-150, filed 1/27/77.] Repealed by WSR 83-24-
031 (Order 83-01), filed 12/1/83, effective 1/1/84.
Statutory Authority: RCW 34.04.022, 41.58.050,
41.56.090, 41.59.110 and 28B.52.080.

391-08-160 Service of process—Opportunity for hearing. [Order
77-1, § 391-08-160, filed 1/27/77.] Repealed by WSR
90-06-070, filed 3/7/90, effective 4/7/90. Statutory
Authority: RCW 41.58.050, 28B.52.080, 41.56.090,
41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060,
41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and
41.59.150.

391-08-170 Service of process—Notice of hearing. [Order 77-1, §
391-08-170, filed 1/27/77.] Repealed by WSR 83-24-
031 (Order 83-01), filed 12/1/83, effective 1/1/84.

Statutory Authority: RCW 34.04.022, 41.58.050,
41.56.090, 41.59.110 and 28B.52.080.

391-08-200 Definition of issues—Before hearing. [Order 77-1, §
391-08-200, filed 1/27/77.] Repealed by WSR 90-06-
070, filed 3/7/90, effective 4/7/90. Statutory
Authority: RCW 41.58.050, 28B.52.080, 41.56.090,
41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59,
49.08 and 53.18 RCW.

391-08-210 Definition of issues—Prehearing conference.
[Statutory Authority: RCW 34.04.022, 41.58.050,
41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031
(Order 83-01), § 391-08-210, filed 12/1/83,
effective 1/1/84; Order 77-1, § 391-08-210, filed
1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90,
effective 4/7/90. Statutory Authority: RCW
41.58.050, 28B.52.080, 41.56.090, 41.59.110,
28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1),
41.56.170, 41.59.080, 41.59.100 and 41.59.150.

391-08-220 Definition of issues—Record of action taken during prehearing conference. [Order 77-1, § 391-08-220, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-08-230 Summary judgment. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 98-14-112, § 391-08-230, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. WSR 90-06-070, § 391-08-230, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 81-02-034 (Order 81-01), § 391-08-230, filed 1/6/81.] Repealed by WSR 00-14-048, filed 6/30/00, effective 8/1/00.

Statutory Authority: RCW 28B.52.080, 41.56.090,
41.59.110, 41.58.050.

391-08-320 Subpoenas—Service. [Order 77-1, § 391-08-320, filed
1/27/77.] Repealed by WSR 83-24-031 (Order 83-01),
filed 12/1/83, effective 1/1/84. Statutory
Authority: RCW 34.04.022, 41.58.050, 41.56.090,
41.59.110 and 28B.52.080.

391-08-330 Subpoenas—Fees. [Order 77-1, § 391-08-330, filed
1/27/77.] Repealed by WSR 83-24-031 (Order 83-01),
filed 12/1/83, effective 1/1/84. Statutory
Authority: RCW 34.04.022, 41.58.050, 41.56.090,
41.59.110 and 28B.52.080.

391-08-340 Subpoenas—Proof of service. [Order 77-1, § 391-08-
340, filed 1/27/77.] Repealed by WSR 83-24-031
(Order 83-01), filed 12/1/83, effective 1/1/84.
Statutory Authority: RCW 34.04.022, 41.58.050,
41.56.090, 41.59.110 and 28B.52.080.

391-08-350 Subpoenas—Quashing. [Order 77-1, § 391-08-350, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-08-360 Subpoenas—Enforcement. [Order 77-1, § 391-08-360, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-08-370 Subpoenas—Geographical scope. [Order 77-1, § 391-08-370, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-08-400 Evidence—Examination of witnesses. [Order 77-1, § 391-08-400, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84.

Statutory Authority: RCW 34.04.022, 41.58.050,
41.56.090, 41.59.110 and 28B.52.080.

391-08-410 Evidence—Application of rules of evidence. [Order
77-1, § 391-08-410, filed 1/27/77.] Repealed by WSR
83-24-031 (Order 83-01), filed 12/1/83, effective
1/1/84. Statutory Authority: RCW 34.04.022,
41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-08-420 Evidence—Objections and rulings. [Order 77-1, § 391-
08-420, filed 1/27/77.] Repealed by WSR 83-24-031
(Order 83-01), filed 12/1/83, effective 1/1/84.
Statutory Authority: RCW 34.04.022, 41.58.050,
41.56.090, 41.59.110 and 28B.52.080.

391-08-450 Evidence—Stipulations and admissions of record.
[Order 77-1, § 391-08-450, filed 1/27/77.] Repealed
by WSR 83-24-031 (Order 83-01), filed 12/1/83,
effective 1/1/84. Statutory Authority: RCW
34.04.022, 41.58.050, 41.56.090, 41.59.110 and
28B.52.080.

391-08-460 Evidence—Submission of documentary evidence. [Order 77-1, § 391-08-460, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-08-470 Evidence—Excerpts from documentary evidence. [Order 77-1, § 391-08-470, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-08-490 Evidence—Refusal of witness to answer. [Order 77-1, § 391-08-490, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-08-500 Declaratory rulings authorized. [Order 77-1, § 391-08-500, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority:

RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.

391-08-510 Declaratory rulings—Petition. [Order 77-1, § 391-08-510, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.

391-08-600 Agency decisions—Form and content. [Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-600, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-600, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 35.05.461 [34.05.461],

28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1),
41.56.170, 41.59.080, 41.59.100 and 41.59.150.

391-08-900 Petitions for rule making—Who may petition. [Order
77-1, § 391-08-900, filed 1/27/77.] Repealed by WSR
90-06-070, filed 3/7/90, effective 4/7/90. Statutory
Authority: RCW 41.58.050, 28B.52.080, 41.56.090,
41.59.110 and chapters 34.05, 28B.52, 41.56, 41.58,
41.59, 49.08 and 53.18 RCW.

391-08-910 Petitions for rule making—Form. [Order 77-1, § 391-
08-910, filed 1/27/77.] Repealed by WSR 90-06-070,
filed 3/7/90, effective 4/7/90. Statutory Authority:
RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and
chapters 34.05, 28B.52, 41.56, 41.58, 41.59, 49.08
and 53.18 RCW.

391-08-920 Petitions for rule making—Agency must consider.
[Order 77-1, § 391-08-920, filed 1/27/77.] Repealed
by WSR 90-06-070, filed 3/7/90, effective 4/7/90.
Statutory Authority: RCW 41.58.050, 28B.52.080,

41.56.090, 41.59.110 and chapters 34.05, 28B.52,

41.56, 41.58, 41.59, 49.08 and 53.18 RCW.

391-08-930 Petitions for rule making—Notice of disposition.

[Order 77-1, § 391-08-930, filed 1/27/77.] Repealed

by WSR 90-06-070, filed 3/7/90, effective 4/7/90.

Statutory Authority: RCW 41.58.050, 28B.52.080,

41.56.090, 41.59.110 and chapters 34.05, 28B.52,

41.56, 41.58, 41.59, 49.08 and 53.18 RCW.

Reviser's note: Chapter 15, Laws of 1983 recreates the marine employees' commission,

Title 316 WAC, and transfers the authority for the administration of chapter 47.64 RCW to that

agency. Title 391 WAC will reflect some of the changes resulting from this statutory revision.

WAC 391-08-001 Application and scope of chapter 391-08

WAC. Chapter 391-08 WAC has been added to the Washington Administrative Code by the public employment relations commission pursuant to the authority of section 12, chapter 288, Laws of 1975 1st ex. sess. (RCW 41.59.110); sections 7, 14 and 20, chapter 296, Laws of 1975 1st ex. sess. (RCW 41.58.050, 28B.52.080 and 41.56.090, respectively); and section 232, chapter 354, Laws of 2002 (RCW 41.06.340); section 15, chapter 356, Laws of 2002 (RCW 41.76.060); section 7, chapter 6, Laws of 2010 (RCW 49.39.060); and section 16, chapter 16 (2ESSB 5742),

Commented [RD(1): Proposed revisions eliminate unnecessary cross-references to other WAC chapters and clarifies relationship between PERC's practice and procedure rules and model rules.

Laws of 2011 1st sp. sess., to promulgate comprehensive and uniform rules for practice and procedure before the agency. This chapter sets forth general rules applicable to all types of proceedings before the agency.

~~and should be read in conjunction with the provisions of:~~

To the extent these rules of practice and procedure differ from the model rules adopted by the chief administrative law judge pursuant to RCW 34.05.250 and found in chapter 10-08 WAC, these rules shall prevail.

~~(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapters 391-25, 391-35, 391-45 and 391-95 WAC, except:~~

~~(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-25-070, 391-25-090, 391-35-050, 391-45-050, and 391-95-110;~~

~~(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;~~

~~(c) WAC 10-08-083, which is replaced by detailed requirements in WAC 391-08-010;~~

~~(d) WAC 10-08-110, which is replaced by detailed requirements in WAC 391-08-120;~~

~~(e) WAC 10-08-120, which is replaced by detailed requirements in WAC 391-08-040, 391-08-300 and 391-08-310;~~

~~(f) WAC 10-08-140, which is limited by WAC 391-08-040, 391-08-300 and 391-08-310;~~

~~(g) WAC 10-08-150, which is limited by WAC 391-08-315;~~

~~(h) WAC 10-08-211, which is replaced by WAC 391-08-640 and detailed requirements in WAC 391-25-390, 391-25-391, 391-25-590, 391-25-630, 391-25-650, 391-25-660, 391-25-670, 391-35-210, 391-35-250, 391-45-350, 391-45-390, 391-95-270, and 391-95-290;~~

~~(i) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-25-150, 391-25-220, 391-25-230, 391-25-250, 391-25-270, 391-35-070, 391-35-080, 391-45-070, 391-45-090, 391-45-260, and 391-95-170; and~~

~~(j) WAC 10-08-250, 10-08-251, and 10-08-252 which are replaced by detailed requirements in WAC 391-08-520.~~

~~(2) Chapter 391-25 WAC, which regulates representation proceedings.~~

~~(3) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.~~

~~(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.~~

~~(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.~~

~~(6) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.~~

~~(7) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.~~

In the event of a conflict between a general rule in this chapter and a special rule in another chapter applicable to a particular proceeding, the special rule shall govern.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-001, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, and 49.39.060. WSR 10-20-172, § 391-08-001, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-

03-064, § 391-08-001, filed 1/14/03, effective 2/14/03.
Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-08-001, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-08-001, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-08-001, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-08-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-001, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-045 (Order 80-4), § 391-08-001, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-001, filed 1/27/77.]

WAC 391-08-003 Policy-Construction-Waiver. The policy of the state being primarily to promote peace in labor relations, these rules and all other rules adopted by the agency shall be liberally construed to effectuate the purposes and provisions of the statutes administered by the agency.~~7 and n~~Nothing in any rule shall be construed to prevent the commission and its authorized agents from using their best efforts to adjust any labor dispute. The commission and its authorized agents may

waive any requirement of the rules unless a party shows that it would be prejudiced by such a waiver.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.58.005(1). WSR 90-06-070, § 391-08-003, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-003, filed 1/27/77.]

WAC 391-08-007 Definitions. As used in Title 391 WAC:

(1) "Agency" means the public employment relations commission, its officers and agents;

(2) "Commission" means the public employment relations commission;

(3) "Executive director" means the officer of that title appointed by the commission pursuant to RCW 41.58.015(2);

(4) "Labor dispute" means any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

Commented [RD(2): The proposed strike removes a subsection referencing the marine employees commission which no longer exists.

(5) ~~"Marine employees' commission" means the marine employees' commission appointed under section 16, chapter 16 (2ESSB 5742), Laws of 2011 1st sp. sess.~~

(65) "Presiding officer" means an agency official(s), examiner, hearing officer or other person authorized to act on behalf of the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-007, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-007, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-007, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-045 (Order 80-4), § 391-08-007, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-007, filed 1/27/77.]

WAC 391-08-010 ~~Appearance and practice before agency~~ Who may appear before the agency-Notice of appearance. (1) ~~No~~

~~person may appear in a representative capacity before the agency other than the following:~~

Commented [RD(3): The proposed rule changes remove reference to "attorneys at law" as the agency does not require one be an attorney to appear.

~~(a) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington;~~

~~(b) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law;~~

~~(c) A bona fide officer, employee or other authorized representative of: (i) Any employer subject to the jurisdiction of the agency, (ii) any labor or employee organization, or (iii) individual may appear in a representative capacity before the agency.~~

(2) Except where the information is already listed in the agency's docket records for the particular case, a person appearing in a representative capacity shall file and serve a notice of appearance listing the representative's name, email, address, and telephone number, ~~fax number, and email address.~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-08-010, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW

28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 00-14-048, § 391-08-010, filed 6/30/00, effective 8/1/00. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-010, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-010, filed 1/27/77.]

**WAC 391-08-020 Appearance and practice before agency—
Standards of conduct.** Misconduct at any hearing conducted by

the commission or a member of its staff shall be grounds for ~~summary suspension or~~ exclusion from ~~appearing before~~ the ~~agency hearing. Misconduct of an aggravated character, when engaged in by an attorney or other person acting in a representative capacity pursuant to WAC 391-08-010, shall be ground for suspension or disbarment by the commission after due notice and hearing.~~

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-020, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-020, filed 1/27/77.]

**WAC 391-08-030 Appearance and practice before agency—
Appearance by former employee of agency or former member of
attorney general's staff.** No former member of the commission,

Commented [RD(4): The proposed strike recognizes that the WA State Bar as well as other state bars, not the Commission, are responsible for determining who may and may not hold a license to practice law. The Commission can, however, determine who appears before it.

Commented [RD(5): The proposed change removes unnecessary language and more narrowly focuses the rule to align with generally accepted ethical practices.

former employee of the agency or former member of the attorney general's staff assigned to represent the agency shall, at any time after severing ~~his or her~~ employment with the agency or with the attorney general, appear in a representative capacity on behalf of any party in connection with any case ~~or proceeding which that they were assigned to work on or had knowledge of was pending before the agency during the time of his or her employment with the agency.~~

Commented [RD(6): In its editing protocols, PERC strives to use gender inclusive language.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 96-07-105, § 391-08-030, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-030, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-030, filed 1/27/77.]

WAC 391-08-040 Appearance and practice before agency—

Former employee as witness. Except upon the express written consent of the commission, no former member of the commission, former employee of the agency or former member of the attorney general's staff assigned to represent the agency shall, at any time after severing his or her employment with the agency or with the attorney general, appear as a witness on behalf of any

Commented [RD(7): Contains the same changes proposed in WAC 391-08-030 and applies them to situations in which that former employee may be a witness.

party in connection with any case ~~or proceeding which~~ that they
were assigned to work on or had knowledge of ~~was pending before~~
~~the agency during the time of his or her employment with the~~
~~agency.~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 96-07-105, § 391-08-040, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-040, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-040, filed 1/27/77.]

WAC 391-08-100 Computation of time. In computing any period of time prescribed or allowed by any applicable statute or rule, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 98-14-112, § 391-08-100, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-100, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-100, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-100, filed 1/27/77.]

WAC 391-08-120 Filing and service of papers. (1)

~~Documents filed with the agency shall be filed at the Olympia office.~~ The agency will post on its web site information for filing using the agency's e-filing system, email address for filing by email, mailing address for filing by mail, and street address for filing by personal delivery~~containing the street address for filing by personal delivery, the mailing addresses for filing by mail, the telephone number for filing by fax transmission, and the email address or other method to be used for electronic filing.~~

Commented [RD(8): The proposed rule changes are made to conform with the agency's new e-filing system, and to reflect the preferred use of electronic over paper methods of filing. Unnecessary words were removed. Filing by fax is deleted. "Time of service" is moved from subsection (4) (e) to (3).

(2) Documents may be filed with the agency by one of the following methods:

(a) By e-filing on the agency's website;

(b) By email;

(c) ~~In person.~~

~~(b)~~ By first class, registered, or certified mail to the
agency's Olympia office;

~~(de)~~ By commercial parcel delivery ~~company;~~

~~(d) Electronically by email, fax transmission~~

(e) By hand delivery in the agency's Olympia office;

(f) ~~Or, by~~ other methods posted ~~only~~ the agency website.

(3) Documents filed with the agency shall be served upon all parties on the same day the documents are filed. Service shall be upon counsel and representatives of record, or upon unrepresented parties or upon their agents designated by them or by law. A document uploaded onto the agency's e-filing system or an electronic filing received by the agency after regular business hours is considered filed on the following business day.

(4) Unless otherwise ordered by the agency in a particular proceeding, filing and service is complete upon one of the following:

(a) E-filing. When a complete and legible copy of the documents is successfully uploaded to the e-filing system during regular business hours and the filer serves the recipient through the e-filing system.

(b) Email. Either by serving by email through the agency's e-filing system or by utilizing another email provider. In both instances, service is complete upon receipt of the entire electronic transmission by the recipient. The metadata created by the successful transmission of the email constitutes the time of service.

(c) ~~Hand delivery.~~

~~(b)~~ Depositing the documents, properly addressed and postage paid, in the U.S. mail.

~~(ed)~~ Acceptance of the documents for delivery by a parcel delivery company.

(e) Hand delivery.

~~(d) Receipt of entire fax transmission by the recipient and receipt by the sending party of confirmation of receipt of the fax transmission. If receipt of a fax commences after office~~

~~hours, the paper will be deemed filed on the next business day the office is open.~~

~~(c) Receipt of the entire electronic transmission by the recipient. The metadata created by the successful transmission of the email or electronic filing constitutes the time of service. If an electronic filing is received by the agency after office hours, the documents will be deemed filed on the next business day the office is open.~~

(5) On the same day that filing and service of documents is completed under subsection (3) and (4) of this section, the person who completed service shall:

(a) Obtain a confirmation of filing and service upon the recipient generated by the agency's e-filing system if the filer serves the recipient through the e-filing system when electronically transmitting documents under subsection (4) (a);
or

~~_Obtain an acknowledgment of service from the person who accepted personal service under subsection (4) (a) of this section; or~~

(b) Make a certificate stating that the person signing the certificate completed service of the papers by:

(i) Electronically transmitting the documents under subsection 4(b) of this section, or

~~(ii) Personally delivering a copy under subsection (4)(a) of this section; or~~

~~(ii)~~ Mailing a copy under subsection (4) (~~cb~~) of this section; or

(iii) Depositing a copy under subsection (4) (~~de~~) of this section with a commercial parcel delivery company named in the certificate; or

(iv) Personally delivering a copy under subsection (4)(e) of this section, or

~~(iv) Electronically transmitting the documents under subsection (4)(d) or (e) of this section.~~

(c) Obtain an acknowledgment of service from the person who accepted personal service under subsection (4)(e) of this section.

(6) Where the sufficiency of service is contested, ~~an acknowledgment of service obtained under subsection (5)(a) of~~

~~this section or a confirmation of filing obtained under (5) (a) of this section,~~ a certificate of service made under subsection (5) (b) of this section, ~~or an acknowledgment of service obtained under subsection (5) (c) of this section~~ shall constitute proof of service.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.280 (2), 49.39.060. WSR 16-05-033, § 391-08-120, filed 2/9/16, effective 3/11/16. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.010 (6) and (19). WSR 00-14-048, § 391-08-120, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-08-120, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.010 (6) and (18). WSR 96-07-105, § 391-08-120, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-120, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-053 (Order 88-01), § 391-08-120, filed 5/31/88. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-120, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-120, filed 1/27/77.]

WAC 391-08-155 Adjudicative Proceedings - Dispositive Prehearing Motions. ~~Unless controlled by WAC 391-08-180, 391-~~

Commented [RD9]: A new rule is proposed to provide parties guidance on dispositive motions practice. If a hearing date has been set, timeframes are established for filing such motions (there may be a waiver of that timeframe for good cause) and the corresponding response brief. The rule does not address reply briefs.

25-170, 391-25-190, 391-45-070, 391-45-210, or 391-45-250, all prehearing motions shall be made in writing and filed and served on all parties of record in accordance with WAC 391-08-120.

(1) When a hearing date(s) has not been established, dispositive prehearing motions may be filed at any time prior to the scheduling of a hearing date. The presiding hearing officer or examiner shall establish a schedule for all parties of record to respond to the motion.

(2) If a hearing date(s) has been established, all dispositive prehearing motions must be filed with the presiding hearing officer or examiner at least 28 days prior to the hearing date unless the presiding hearing officer or examiner deems the timeframe waivable for good cause shown.

(a) When a dispositive prehearing motion is filed, the non-moving party or parties must file and serve response(s) to the motion within 14 days from the date in which the motion was filed.

(b) The presiding hearing officer or examiner must rule on the motion at least 7 days prior to the first established hearing date.

(3) All motions shall state the relief sought, the specific basis for the request, and the supporting legal authorities. Motions may be accompanied by other supporting materials, such as affidavits.

WAC 391-08-180 Continuances. (1) Postponements,

continuances, extensions of time, and adjournments may be

Commented [RD(10): The proposed addition to the rule is made to reflect current agency practice.

ordered by the presiding officer on his or her own motion or may be granted on timely request of any party, with notice to all other parties, if the party shows good cause.

(2) A request for a continuance may be oral or written. The party seeking the continuance shall notify all other parties of the request. The request for a continuance shall state whether or not all other parties agree to the continuance.

If all parties do not agree to the continuance, the presiding officer shall promptly schedule a prehearing conference or request emails to receive argument and to rule on the request.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 00-14-048, § 391-08-180, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-08-180, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-08-180, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-180, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-180, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-045 (Order 80-4), § 391-08-180, filed

9/30/80, effective 11/1/80; Order 77-1, § 391-08-180, filed 1/27/77.]

~~WAC 391-08-190 Prefiling of collective bargaining agreements.~~ The agency shall make available a procedure for parties to proceedings before the agency to prefile collective bargaining agreements with the agency in accordance with this section, and to thereafter incorporate prefiled contracts into other filings, by reference. The prefiled copy will then take the place of filing copies otherwise required by rules in Title 391 WAC.

~~(1) An employer and/or exclusive bargaining representative who request prefiling of their collective bargaining agreement under this section may file a written request with the agency.~~

~~(a) The requesting party or parties shall use the form prescribed by the executive director.~~

~~(b) The requesting party or parties shall attach or enclose a complete electronic copy of the collective bargaining agreement (in Adobe Acrobat, WordPerfect, or Microsoft Word format).~~

Commented [RD(11): The rule strike is proposed because the agency no longer requires prefiling of contracts and no longer maintains a database of such documents.

~~(c) The requesting party or parties shall attach photocopies of certain pages of the original collective bargaining agreement, as follows:~~

~~(i) The front cover or first page(s) showing the names of the parties and the identification of the bargaining unit(s) covered;~~

~~(ii) The page(s) containing the effective date and termination dates of the collective bargaining agreement; and~~

~~(iii) The page(s) containing the signatures of the parties' representatives.~~

~~(2) Upon the filing of a request conforming to subsection (1) of this section, the agency shall put the prefiled collective bargaining agreement into an electronic database.~~

~~(a) The collective bargaining agreements contained in the electronic database shall be open to public inspection and copying.~~

~~(b) The agency shall issue the parties a confirmation code unique to that collective bargaining agreement.~~

~~(3) After issuance of a confirmation code under subsection (2) (b) of this section, the parties are authorized to~~

~~incorporate that prefiled collective bargaining agreement into any paper subsequently filed with the agency under Title 391 WAC, by referring to the confirmation code in the subsequent document.~~

~~(4) The authorization in subsection (3) of this section shall terminate on the expiration date originally stated in the prefiled collective bargaining agreement.~~

~~(5) Any amendments to the original agreement may be filed and incorporated into the original filing under subsection (1) of this section. If either party declines to profile an amendment to a collective bargaining agreement under this rule, a copy of any amendment must be included in any subsequent case filed with the commission.~~

~~[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-08-190, filed 1/31/08, effective 4/1/08.]~~

WAC 391-08-300 Subpoenas-Discovery. ~~The power of~~

~~subpoena shall be limited to compelling the testimony of witnesses and production of documents or other tangible evidence at hearings conducted by the agency.~~

Commented [RD(12): The first sentence of the rule is moved to WAC 391-08-310 because that rule deals with the use of subpoenas.

Pursuant to the authority delegated to the agency by RCW 34.05.446(2), ~~other forms of~~ discovery shall not be available in proceedings before the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.446. WSR 98-14-112, § 391-08-300, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. WSR 90-06-070, § 391-08-300, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-300, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-300, filed 1/27/77.]

WAC 391-08-310 Subpoenas-Form-Issuance to parties. The

power of subpoena shall be limited to compelling the testimony of witnesses and production of documents or other tangible evidence at hearings conducted by the agency. (1) Every subpoena shall:

- (a) State the name of the agency as: State of Washington, public employment relations commission;
- (b) State the title of the proceeding and case number; and
- (c) Identify the party causing issuance of the subpoena.

Commented [RD(13): The proposed addition is copied from WAC 391-08-300 in an effort to have just one rule address subpoenas. Outdated wording is replaced or removed.

(2) Every subpoena shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control at the time and place set for the hearing, except no subpoena shall be issued or given effect to require the attendance and testimony of, or the production of evidence by, any member of the commission or any member of the agency staff in any proceeding before the agency.

(3) Subpoenas may be issued by the commission or its presiding officer:

(a) On the request of counsel or other representative authorized to practice before the agency; or

(b) On the request of a party not represented by counsel or other representative authorized to practice before the agency, but may then be conditioned upon a showing of general relevance and reasonable scope of the testimony or evidence sought.

(4) Subpoenas may be issued by attorneys under the authority conferred upon them by RCW 34.05.446(1).

(5) A subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the

witness, or by giving ~~the witness~~him or her a copy of the subpoena, or by leaving a copy of the subpoena at the place of ~~his or her~~the witnesses's abode~~residence~~. When service is made by any person other than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.

(6) The party which issues or requests issuance of a subpoena shall pay the fees and allowances and the cost of producing records required to be produced by subpoena.

(a) Witness fees, mileage, and allowances for meals and lodging shall be at the rates and terms allowed by the superior court for Thurston County.

(b) Witnesses shall be entitled to payment in advance for their fees for one day's attendance, together with mileage for traveling to and returning from the place where they are required to attend, if their demand for payment is made to the officer or person serving the subpoena at the time of service.

(7) The presiding officer, upon motion made at or before the time specified in the subpoena for compliance ~~therewith,~~ may:

(a) Quash or modify the subpoena if it is unreasonable or 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.

(8) Subpoenas shall be enforced as provided in RCW 34.05.588(1).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 2.40.010, 5.56.010 and 34.05.446. WSR 00-14-048, § 391-08-310, filed 6/30/00, effective 8/1/00; WSR 99-14-060, § 391-08-310, filed 7/1/99, effective 8/1/99; WSR 98-14-112, § 391-08-310, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. WSR 90-06-070, § 391-08-310, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-310, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-310, filed 1/27/77.]

WAC 391-08-315 Interpreters. (1) For all adjudicative proceedings under the Administrative Procedure Act (cases under chapters 391-25, 391-35 and, 391-45 ~~and 391-95 WAC~~), the

Commented [RD(14): The proposed changes remove reference to 391-95 WAC which dealt with the "right of nonassociation." (In light of *Janus*, we are also proposing that 391-95 WAC be stuck in its entirety). Unnecessary wording is removed.

provisions of WAC 10-08-150 ~~as now or hereafter amended~~ shall apply.

(2) For all cases that are not adjudicative proceedings under the Administrative Procedure Act (cases under chapters 391-55 and 391-65 WAC), the provisions of WAC 10-08-150 ~~as now or hereafter amended~~ shall apply, except that all interpreter fees and expenses shall be paid by the party which requests the participation of an impaired person as defined in chapter 2.42 RCW or a non-English-speaking person as defined in chapter 2.43 RCW.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 2.42.120 and 2.43.030. WSR 98-14-112, § 391-08-315, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100, 41.59.150 and chapter 2.42 RCW. WSR 90-06-070, § 391-08-315, filed 3/7/90, effective 4/7/90.]

WAC 391-08-610 Agency decisions—Service. Every final order issued by the agency shall be served on each party or upon the agency designated by the party or by law to receive service of such papers; and a copy shall be furnished to any counsel or person appearing for a party in a representative capacity.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. WSR 90-06-070, § 391-08-610, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-610, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-610, filed 1/27/77.]

WAC 391-08-630 Agency structure~~Substitution for executive director~~. (1) The public employment relations commission and its staff maintain an impartial role in all proceedings pending before the agency.

(2) The commission consists of three citizen members appointed by the governor with the advice and consent of the senate, pursuant to RCW 41.58.010. Commission members serve on a part-time basis only. All commission members represent the interests of the public. The commission reserves to itself a policy-making and appellate function.

(3) The executive director appointed by the commission pursuant to RCW 41.58.015(2) is the full-time agency head, with authority to act in administrative and personnel matters. Authority is also delegated to the executive director to make substantive decisions in certain types of cases.

Commented [RD(15)]: The proposed deletions to the rule are made as some wording is unnecessary, to allow flexibility in processing cases, and because the marine employees commission no longer exists.

(4) The commission's ~~professional~~ staff is appointed pursuant to RCW 41.58.015(3). ~~A "multifunctional" staffing pattern is used, whereby i~~Individual members of the commission's ~~professional~~ staff are assigned ~~from time to time~~ to conduct any or all of the types of dispute resolution services provided by the agency. ~~Authority is delegated to members of the professional staff to make decisions as "examiner" under chapters 391-45 and 391-95 WAC. The executive director may also delegate authority to members of the professional staff to make decisions in certain situations under chapters 391-25 and 391-35 WAC.~~

~~(5) In the event the executive director is disqualified from participation in a decision, the most senior (in terms of length of service with this agency) dispute resolution manager authorized to act as the designee of the executive director to make preliminary rulings on unfair labor practice cases under WAC 391-45-110, who has not been directly involved in the particular circumstances shall make decisions and rulings otherwise required of the executive director. Thereafter, this~~

~~authority passes to the other dispute resolution managers in agency seniority order.~~

~~(6) The marine employees' commission consists of three citizen members appointed by the governor with the advice and consent of the senate, pursuant to and consistent with section 16, chapter 16 (2ESSB 5742), Laws of 2011 1st sp. sess.~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-630, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 41.58.010 and [41.58].015. WSR 03-03-064, § 391-08-630, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.58.010 and 41.58.015. WSR 98-14-112, § 391-08-630, filed 7/1/98, effective 8/1/98; WSR 90-06-070, § 391-08-630, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 85-19-059 (Resolution No. 85-01), § 391-08-630, filed 9/16/85.]

WAC 391-08-640 ~~Adjudicative proceedings Appeals~~Amicus
briefs-Commission review. ~~Actions by the executive director and other agency staff members in adjudicative proceedings under the Administrative Procedure Act (cases under chapters 391-25, 391-~~

Commented [RD(16): The proposed rule changes are made to accurately reflect what is covered in the section, and remove unnecessary wording that is already coved in other chapters. Outdated language is also removed.

~~35, 391-45 and 391-95 WAC) are taken under authority delegated by the commission.~~

~~(1) The parties shall have the right to appeal to the commission, as follows:~~

~~(a) Under chapter 391-25 WAC, a direction of election or direction of cross-check and other rulings in the proceedings up to the issuance of a tally are interim orders, and may only be appealed to the commission by objections under WAC 391-25-590 after the election or cross-check.~~

~~(b) Under chapter 391-25 WAC, an order issued under WAC 391-25-390 or 391-25-510 and any rulings in the proceedings up to the issuance of the order, as well as rulings that the employer or employees are subject to the jurisdiction of the commission, may be appealed to the commission under WAC 391-25-660.~~

~~(c) Under chapter 391-35 WAC, an order issued under WAC 391-35-190 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-35-210.~~

~~(d) Under chapter 391-45 WAC, an order issued under WAC 391-45-110(1) or 391-45-310 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-45-350.~~

~~(e) Under chapter 391-95 WAC, an order issued under WAC 391-95-150(1) or 391-95-250 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-95-270.~~

~~(2) For cases decided under chapter 47.64 RCW, the marine employees' commission shall act in place of the commission.~~

~~(13) The commission will only consider amicus (friend of the forum) briefs filed in conformity with this subsection.~~

(a) The person or organization desiring to file an amicus brief must:

(i) Obtain a copy of the decision on appeal, the notice of appeal, and the briefs of the parties;

(ii) Limit any amicus brief to particular issues on appeal;

(iii) Limit any legal analysis to arguments that differ from those advanced by the parties;

(iv) Exclude restatement or reargument of the facts, except as necessary to legal arguments under (a)(iii) of this subsection;

(v) Limit any amicus brief to twenty-five pages in total length (double-spaced, 12-point type); and

(vi) File the amicus brief with the commission within fourteen days following filing and service of the briefs of the parties, and serve copies of any such brief on each of the original parties in the case.

(b) The commission may extend the deadline for a party wishing to file an amicus brief if the petitioning party demonstrates good cause for such extension.

(c) The original parties to the case may, within fourteen days following the filing and service of an amicus brief, file and serve written responses to the amicus brief.

(d) A person or organization that files an amicus brief does not ~~thereby acquire~~ have any right to reply to the responses filed by the original parties to the case.

(e) A person or organization that files an amicus brief does not ~~thereby~~ become a party to the case for purposes of any further proceedings or appeal.

(~~42~~) The commission may, on its own motion, review any order which is subject to appeal ~~under subsection (1) of this section,~~ by giving written notice to all parties within thirty days following the issuance of the order.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. WSR 12-05-066, § 391-08-640, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-08-640, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.464. WSR 98-14-112, § 391-08-640, filed 7/1/98, effective 8/1/98.]

WAC 391-08-650 Case docketing and numbering. The agency

maintains a ~~computerized~~ case docketing and numbering system ~~that which is used to track~~s and manages all requests for ~~the~~ dispute resolution services ~~provided by the agency~~.

(1) Each case processed by the agency is identified by a unique sequential number representing the number of cases docketed since the agency commenced, letter describing the type

Commented [RD(17): The proposed changes are made to simplify the rule. Unnecessary wording is also removed.

of dispute being processed, and number representing the calendar year the case was filed.~~consisting of three components.~~

~~(a) The first component, consisting of a five-digit number, indicates the sequential number of cases docketed since the agency commenced operations on January 1, 1976.~~

~~(b) The second component, consisting of one alphabetic code, indicates the type of dispute being processed, as follows:~~

~~"A" indicates a grievance arbitration proceeding under chapter 391-65 WAC, wherein an agency staff member is to interpret or apply an existing collective bargaining agreement.~~

~~"C" indicates a unit clarification proceeding under chapter 391-35 WAC.~~

~~"D" indicates a declaratory ruling or declaratory order proceeding under the Administrative Procedure Act, and formerly included proceedings under chapter 391-95 WAC concerning assertion of the right of nonassociation by employees subject to union security obligations.~~

~~"E" indicates a representation proceeding under chapter 391-25 WAC.~~

~~"F" indicates a fact-finding proceeding under chapter 391-55 WAC, to recommend the terms of a collective bargaining agreement.~~

~~"G" indicates a grievance mediation proceeding under chapter 391-55 WAC after January 1, 1996, concerning the interpretation or application of an existing collective bargaining agreement.~~

~~"I" indicates an interest arbitration proceeding under chapter 391-55 WAC, to establish the terms of a collective bargaining agreement.~~

~~"M" indicates a mediation proceeding under chapter 391-55 WAC, limited after January 1, 1996, to disputes concerning the terms of a collective bargaining agreement.~~

~~"N" indicates a proceeding under chapter 391-95 WAC after January 1, 1996, concerning assertion of the right of nonassociation by employees subject to union security obligations.~~

~~"P" indicates a request for a list of arbitrators from the commission's dispute resolution panel for grievance arbitration proceedings under chapter 391-65 WAC.~~

~~"S" indicates a settlement mediation proceeding for cases under chapters 391-45 and 391-95 WAC.~~

~~"U" indicates an unfair labor practice proceeding under chapter 391-45 WAC.~~

~~(c) The third component, consisting of a two-digit number, indicates the calendar year in which the case is docketed.~~

(2) Cases involving various departments or divisions of an employer entity are docketed under the name of the employer entity.

(3) Cases filed by an employee organization or labor organization are docketed under the name of the organization, even if employees represented by that organization are named individually in the pleadings or are affected by the outcome of the proceedings.

(4) Cases filed by two or more individual employees are docketed separately for each employee.

(5) Cases filed by an individual employee involving multiple respondents are docketed separately for each respondent.

[Statutory Authority: RCW 28B.52.080, 41.56.050, 41.59.110, 41.76.060, 41.80.080, 47.64.280(2), 49.39.060. WSR 16-19-058, § 391-08-650, filed 9/19/16, effective 10/20/16. Statutory Authority: RCW 28B.52.080, 34.05.220, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-650, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.220. WSR 96-07-105, § 391-08-650, filed 3/20/96, effective 4/20/96.]

WAC 391-08-670 Decision numbering—Citation of cases—

Indexing of decisions. (1) Each decision issued by the agency

in an adjudicative proceeding under the Administrative Procedure Act is assigned a unique number consisting of two or three components, as follows:

(a) The first component, ~~consisting~~ consists of a number, ~~and~~ indicates the sequential number of adjudicative proceedings in which one or more decisions has been issued since the agency commenced operations on January 1, 1976.

(b) The second component (where appropriate) ~~consisting~~ consists of ~~an alphabetic code~~ letter in ascending alphabetical order, ~~and~~ indicates the second and subsequent decisions issued

Commented [RD(18): The proposed changes are made to simplify the rule. Unnecessary wording and punctuation is also removed.

in the case ~~to which the numerical component was originally assigned.~~

(c) The third component, ~~consisting~~ consists of ~~a four-letter~~ alphabetic letterseeder, and indicates the statute under which the decision was issued:

"CCOL" ~~- indicates cases decided under~~ chapter 28B.52 RCW (Collective Bargaining-Academic Personnel in Community Colleges).

"EDUC" ~~- indicates cases decided under~~ chapter 41.59 RCW (Educational Employment Relations Act).

"FCBA" ~~- indicates cases decided under~~ chapter 41.76 RCW (faculty at public four-year institutions of higher education).

"MRNE" ~~- indicates cases decided under~~ chapter 47.64 RCW, relating to the Washington state ferries system.

"PECB" ~~- indicates cases decided under~~ chapter 41.56 RCW (Public Employees' Collective Bargaining Act), including some cases involving port districts.

"PORT" ~~- indicates cases decided exclusively under~~ chapter 53.18 RCW (Employment Relations-Collective Bargaining and Arbitration), relating to port districts.

"PRIV" ~~_ indicates cases decided under~~ chapter 49.08 RCW,
relating to private sector employers and employees.

"PSRA" ~~_ indicates cases decided under~~ RCW 41.06.340 and/or
chapter 41.80 RCW (Personnel System Reform Act).

(2) All citations of agency decisions in subsequent agency
decisions, in publications of agency decisions, and in briefs
and written arguments filed by parties with the agency shall
conform to the formats specified in this section:

GENERAL
RULE: Citations shall list only the name of the employer *italicized*, the word "Decision" followed by the
decision number, and the statute and year the decision was issued (in parenthesis).

Examples: *City of Roe*, Decision 1234 (PECB, ~~1992~~2020)
City of Roe, Decision 1234-A (PECB, ~~1993~~2020)
City of Roe, Decision 1234-B (PECB, ~~1994~~2020)

EXCEPTION: For decisions in which an employee organization or labor organization was named as the
respondent in an unfair labor practice case, the citation shall list the name of the union (in
parenthesis) following the name of the employer.

Example: *City of Roe (Doe Union)*, Decision 2345 (PECB, ~~1995~~2020)

(3) ~~The agency encourages the publication and indexing of
its decisions by private firms, but does not contribute
financial support to any such firm and declines to declare any
private firm as the "official reporter" of agency decisions.~~

~~(4)~~ To satisfy the requirements of RCW 42.17.260(5), the agency
publishes its decisions, together with a search engine, on its
web site at: "www.perc.wa.gov".

[Statutory Authority: RCW 28B.52.080, 34.05.220, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-670, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, and 34.05.220. WSR 03-11-029, § 391-08-670, filed 5/15/03, effective 6/15/03; WSR 03-03-064, § 391-08-670, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, and 34.05.220. WSR 00-24-044, § 391-08-670, filed 11/30/00, effective 1/1/01; WSR 96-07-105, § 391-08-670, filed 3/20/96, effective 4/20/96.]

WAC 391-08-800 Agency records—Public records officer—

Contact information. (1) Any person wishing to request access to public records of the agency, or seeking assistance in making such a request should contact the public records officer of the agency:

Public Records Officer

~~7~~—Public Employment Relations Commission

P.O. Box 40919

360-570-7300

info@perc.wa.gov

Commented [RD(19): Under our rules on public records, the proposed changes are made to align the agency's rules with the model rules in Chapter 44-14 WAC. The model rules were last updated in 2018, after PERC's last rules revision.

Information is also available at the agency's web site at www.perc.wa.gov.

(2) The public records officer will oversee compliance with the act but another staff member may process the request.

Therefore, these rules refer to the public records officer "or designee." The public records officer or designee will provide the "fullest assistance" to requestors, ensure that public records are protected from damage or disorganization, and prevent fulfilling public records requests from causing excessive interference with essential functions of the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.050, 41.59.110, 41.76.060, 41.80.080, 47.64.280(2), 49.39.060. WSR 16-19-058, § 391-08-800, filed 9/19/16, effective 10/20/16. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. WSR 10-20-172, § 391-08-800, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.220 and 34.05.476. WSR 98-14-112, § 391-08-800, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090 and 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08, 53.18 and 42.17 RCW. WSR 90-06-070, § 391-08-800, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-800, filed 1/27/77.]

WAC 391-08-810 Agency records—Confidentiality. The agency shall preserve the confidentiality of certain records, as follows:

(1) In order to protect the privacy of individual employees, the agency shall not permit the disclosure to any person of evidence furnished as a showing of interest in support of a representation petition or motion for intervention.

(2) In order to respect the confidential nature of mediation, the agency shall not permit the disclosure of notes and memoranda made by any member of the commission or its staff as a recording of communication made or received while acting in the capacity of a mediator between the parties to a labor dispute.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.060, 41.56.070, 41.56.100, 41.56.440, 41.58.020, 41.59.120 and 49.08.010. WSR 99-14-060, § 391-08-810, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 98-14-112, § 391-08-810, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.060, 41.56.070, 41.56.100, 41.56.440, 41.58.020, 41.59.120 and

49.08.010. WSR 90-06-070, § 391-08-810, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-810, filed 1/27/77.]

WAC 391-08-820 Agency offices. (1) The agency maintains its principal office in the city of Olympia, Washington.

(a) The street address of the Olympia office is:

Public Employment Relations Commission

112 Henry Street N.E., Suite 300

Olympia, Washington 98504-0919.

(b) The mailing address of the Olympia office is:

Public Employment Relations Commission

P.O. Box 40919

Olympia, Washington 98504-0919.

(2) The agency maintains a branch office at:

Public Employment Relations Commission

Suite 201

9757 NE Juanita Drive-~~NE~~

Kirkland, Washington 98034.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-08-820, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW

28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 96-07-105, § 391-08-820, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-820, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-045 (Order 80-4), § 391-08-820, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-820, filed 1/27/77.]

WAC 391-08-830 Agency records—Availability—Organization—

Requests. (1) Hours for inspection of records. Public records are available for inspection and copying during normal business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the Olympia office of the agency.

(2) Organization of records. The agency will maintain its records in a reasonably organized manner. The agency will take reasonable actions to protect records from damage and disorganization. A requestor shall not take agency records from its offices without the permission of the public records officer or his or her designee. A variety of records is available on the agency web site at www.perc.wa.gov. Requestors are encouraged to

view the documents available on the web site prior to submitting a records request.

(3) Making a request for public records:

(a) Any person wishing to inspect or copy public records of the agency should make the request in writing on by letter, ~~fax~~, or email addressed to the public records officer at the email address publicly designated by the agency, or by submitting the request in person at the agency and including the following

Commented [RD(20): Included in model rule WAC 44-14-030 (4) (a) .

information:

(i) Name of requestor;

(ii) Address of requestor;

(iii) Other contact information, including telephone number and any email address;

(iv) Identification of the public records adequate for the public records officer or designee to locate the records; and

(v) The date and time of day of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, the requestor~~he or she~~ should so indicate and make arrangements to pay for copies of the records or make a deposit. Pursuant to WAC 391-08-860

Commented [RD(21): Although "he" and "she" is used in the model rule, PERC's editing protocols strive to use gender inclusive language.

~~standard photocopies will be provided at fifteen cents per page.~~

Commented [RD(22): Removing redundant language. See WAC 391-08-870 (2) below.

(c) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, ~~he or she~~they will confirm receipt of the information and the substance of the request in writing.

(e) If the requestors refuse to identify themselves or provide sufficient contact information, the agency will respond to the extent feasible and consistent with the law.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. WSR 10-20-172, § 391-08-830, filed 10/6/10, effective 11/6/10.]

WAC 391-08-840 Processing of public records requests. (1)

Providing fullest assistance. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(a) Upon receipt of a request, the agency will assign it a tracking number and log it in;

(b) The public records officer or designee will evaluate the request according to the nature of the request, volume, and availability of requested records.

Commented [RD(23): In model rule WAC 44-14-030 (4) (e) .

Commented [RD(24): In model rule WAC 44-14-040 (1) - (3) .

(2) Acknowledging receipt of request. Within five business days of receipt of the request, the public records officer will do one or more of the following:

Commented [RD(25): In model rule WAC 44-14-040 (4) .

(a) Make the records available for inspection or copying including;

(i) If copies are available on the agency's internet web site, provide an internet address and link on the web site to specific records requested;

Commented [RD(26): In model rule WAC 44-14-040 (4) (a) (i) .

(bii) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;

(eb) Provide a reasonable estimate of when records will be available (the public records officer or designee may revise the estimate of when records will be available); or

Commented [RD(27): Moved from current WAC 391-08-840 (1) (d) .

(dc) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor.

(i) Such clarification may be requested and provided by telephone, and memorialized in writing.;

(ii) If the requestor fails to respond to a request for clarification and the entire request is unclear, the agency need not respond to it. The agency will respond to those portions of a request that are clear. The public records officer or

Commented [RD(28): In model rules WAC 44-14-040 (4) (c) (i) and (ii) .

~~designee may revise the estimate of when records will be available~~; or

(~~e~~d) Deny the request.

(~~2~~3) Protecting rights of others. In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask ~~them~~him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(~~4~~3) Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the agency believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(54) Inspection of records.

(a) Consistent with other demands, the agency shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents they would like~~he or she wishes~~ the agency to copy.

(b) The requestor must claim or review the assembled records within thirty days of the agency's notification~~to him~~
~~or her~~ that the records are available for inspection or copying. The agency will notify the requestor in writing of this requirement and inform the requestor that ~~he or she~~they should contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the agency may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(56) Providing copies of records. After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

(67) Providing records in installments. When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if ~~he or she~~they reasonably determines that it would be practical to provide the records in that manner. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(78) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the agency has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(89) Closing withdrawn or abandoned request. When the requestor either withdraws the request or fails to fulfill his

or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the agency has closed the request.

(910) Later discovered documents. If, after the agency has informed the requestor that it has provided all available records, the agency becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. WSR 10-20-172, § 391-08-840, filed 10/6/10, effective 11/6/10.]

WAC 391-08-850 Processing of public records—Electronic

records. (1) Requesting electronic records. The process for requesting electronic public records is the same as for requesting paper public records.

(2) Providing electronic records. When a requestor requests electronic records in an electronic format, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially

Commented [RD(29)]: In model rule WAC 44-14-050 (1).

Commented [RD(30)]: In model rule WAC 44-14-050 (2).

available, or in a format that is reasonably translatable from the format in which the agency keeps the record.

(3) Customized access to databases. With the consent of the requestor, the agency may provide customized access services and assess changes under RCW ~~43.105.280~~42.56.120(2)(f). A customized service charge applies only if the agency estimates that the request would require the use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by the agency for other purposes. The agency may charge a fee consistent with RCW 42.56.120 (2)(f) for such customized access.~~if the record is not reasonably locatable or not reasonably translatable into the format requested. The agency may charge a fee consistent with RCW 43.105.280 for such customized access.~~

Commented [RD(31): In model rule WAC 44-14-050(3).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. WSR 10-20-172, § 391-08-850, filed 10/6/10, effective 11/6/10.]

WAC 391-08-860 Exemptions to public records.

(1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure.

(2) The agency is prohibited by statute from disclosing lists of individuals for commercial purposes.]

Commented [RD(32)]: In model rule WAC 44-14-060.

[Statutory Authority: [RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060.] WSR 10-20-172, § 391-08-860, filed 10/6/10, effective 11/6/10.]

WAC 391-08-870 Costs ~~offer~~ providing copies of public records. (1) Inspection. There is no fee for inspecting public records, including inspecting records on the agency website, www.perc.wa.gov.

Commented [RD(33)]: In model rule WAC 44-14-070, title.

(2) Costs. A requestor may obtain ~~standard black and white photocopies~~ for fifteen cents per page ~~and color copies for twenty-five cents per page~~.

Commented [RD(34)]: In model rule WAC 44-14-070 (1).

(2) Processing payments. Before beginning to make the copies, or processing a customized service the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The

Commented [RD(35)]: Added headers so section is consistent.

agency will not charge sales tax when it makes copies of public records.

~~(34) Electronic records. The cost of electronic copies of records shall be one dollar for information on a CD-ROM.~~ There will be no charge for emailing electronic records to a requestor, unless another cost applies.

Commented [RD(36)]: Removed as outdated.

(45) Costs of mailing. The agency may also charge actual costs of mailing, including the cost of the shipping container.

(56) Payment may be made by cash, check, or money order to the "Public Employment Relations Commission."

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. WSR 10-20-172, § 391-08-870, filed 10/6/10, effective 11/6/10.]

WAC 391-08-880 Review of denial of public records. (1)

Commented [RD(37)]: The proposed headers are made to align the agency's rules with the model rules in Chapter 44-14 WAC, and with other sections in this rule.

Petition for internal administrative review of denial of access.

Any person who objects to the initial denial or partial denial of a records request may petition in writing to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) Consideration of petition for review. The public records officer shall promptly provide the petition and any other relevant information to the executive director who will immediately consider the petition and either affirm or reverse the denial within two business days following the agency's receipt of the petition, or within such other time as agency and the requestor mutually agree to.

(3) Review by the attorney general's office. Pursuant to RCW 42.56.530, i~~f~~ the agency denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter under the procedure set forth under WAC 44-06-160.

(4) Judicial review. Any person may obtain court review of denials of public records requests at the conclusion of two business days after the initial denial of such request regardless of any internal administrative appeal.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. WSR 10-20-172, § 391-08-880, filed 10/6/10, effective 11/6/10.]