

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), Laws of 2011 1st sp. sess., to promulgate)) The purpose of chapter 391-08 WAC is to provide comprehensive and uniform rules ((for)) of 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:

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

~~((In the event of a conflict)) If a conflict arises between a general rule in this chapter and a special rule in another chapter applicable to a particular proceeding, the special rule ((shall)) governs.~~

AMENDATORY SECTION (Amending WSR 90-06-070, filed 3/7/90, effective 4/7/90)

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))~~ commission are liberally construed to effectuate the purposes and provisions of the statutes administered by the agency~~((, and))~~. ~~Nothing in any rule ((shall be construed to)) prevents the ((commission and its authorized agents))~~ agency from using ~~((their))~~ its best efforts to adjust any labor dispute. The ~~((commission and its authorized agents))~~ agency may waive any requirement of the rules unless a party shows that it would be prejudiced by ~~((such))~~ a waiver.

AMENDATORY SECTION (Amending WSR 12-05-066, filed 2/15/12, effective 3/17/12)

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

- (1) "Agency" means the public employment relations commission, its officers, and its agents;
- (2) "Commission" means the commissioners of the public employment relations commission appointed by the governor;
- (3) "Executive director" means the officer of that title appointed by the commission ~~((pursuant to))~~ under RCW 41.58.015(2);
- (4) "Labor dispute" means any controversy concerning terms or conditions of employment~~((, or))~~ 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.
- (5) ~~((("Marine employees' commission" means the marine employees' commission appointed under section 16, chapter 16 (2ESSB 5742), Laws of 2011 1st sp. sess.~~
- ~~((6))~~ "Presiding officer" means an agency official~~((, or))~~, examiner, or hearing officer ~~((or other person authorized to act on behalf of the agency))~~.

NEW SECTION

WAC 391-08-008 Agency structure. (1) The agency maintains an impartial role in all proceedings pending before it.

(2) The commission consists of three citizen members appointed by the governor with the advice and consent of the senate under 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 under 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.

(4) The agency's staff is appointed under RCW 41.58.015(3). Individual members of the agency's staff are assigned to conduct any or all of the types of dispute resolution services provided by the agency.

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

WAC 391-08-010 (~~Appearance and practice before agency~~) Who may appear before the agency—Notice of appearance. (1) ~~((No person))~~ Any of the following may appear in a representative capacity before the agency ~~((other than the following:~~

~~(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) A bona fide officer, employee, or other authorized representative of((+)) (i) any employer subject to the jurisdiction of the agency((+)) or (ii) any ~~((labor or))~~ employee organization((+))i~~

~~((+)) (b) An individual or their authorized representative.~~

(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, mailing address, and telephone number~~((, fax number, and email address))~~.

AMENDATORY SECTION (Amending WSR 90-06-070, filed 3/7/90, effective 4/7/90)

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)) agency is grounds for ((summary)) suspension or exclusion from ((the 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)) appearing before the agency after due notice and hearing.~~

AMENDATORY SECTION (Amending WSR 96-07-105, filed 3/20/96, effective 4/20/96)

WAC 391-08-030 Appearance and practice before agency—((Appearance by)) Former employee of agency or former member of attorney general's staff as representative. ((No)) A 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)) may not, 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 in which ((was pending before the agency)) that person participated personally or substantially during the time of ((his or her)) employment with the agency or attorney general.

AMENDATORY SECTION (Amending WSR 96-07-105, filed 3/20/96, effective 4/20/96)

WAC 391-08-040 Appearance and practice before agency—Former employee or former member of attorney general's staff as witness. Except upon the express written consent of the ((commission, no)) agency, a 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)) may not, 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 party in connection with any case or proceeding in which ((was pending before the agency)) that person participated personally or substantially during the time of ((his or her)) employment with the agency or attorney general.

AMENDATORY SECTION (Amending WSR 98-14-112, filed 7/1/98, effective 8/1/98)

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)) that is ((neither)) not a Saturday, Sun-

day (~~nor a~~), or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays (~~shall be~~) are excluded (~~is~~) from the computation.

AMENDATORY SECTION (Amending WSR 16-05-033, filed 2/9/16, effective 3/11/16)

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

~~((Documents filed with the agency shall be filed at the Olympia office.))~~ The agency will post on its website at www.perc.wa.gov information ~~((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))~~ for filing using the agency's e-filing system, the email address for filing by email, the mailing address for filing by mail, and the street address for filing by personal delivery.

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

(a) ~~((In person.))~~ E-filing on the agency's website at www.perc.wa.gov;

(b) ~~((By))~~ Email to filing@perc.wa.gov;

(c) First class, registered, or certified mail ~~((-~~

~~By))~~ to the agency's Olympia mailing address;

(d) Commercial parcel delivery ~~((company-~~

~~d) Electronically by email, fax transmission, or))~~ to the agency's Olympia office;

(e) Hand delivery to the agency's Olympia office; or

(f) Other methods posted ~~((by))~~ on the agency website at www.perc.wa.gov.

(3) Documents filed with the agency (~~shall~~) must be served ~~((upon))~~ on all parties on the same day the documents are filed. Service ~~((shall))~~ must be upon counsel and representatives of record, or upon unrepresented parties or upon their agents designated by them or by law.

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

(a) ~~((Hand delivery.))~~ E-filing. Filing is complete when a legible copy of the document is successfully uploaded to the e-filing system. Service is complete upon receipt of the entire electronic transmission by the recipient. The metadata created by the successful transmission of the email will serve as the record of the time of service.

(b) Email. Filing or service is complete upon receipt of the entire electronic transmission by the recipient. The metadata created by the successful transmission of the email will serve as the record of the time of filing or service.

(c) Depositing the ~~((documents, properly))~~ document(s) correctly addressed and postage paid, in the U.S. mail.

~~((e))~~ (d) Acceptance of the ~~((documents))~~ document(s) for delivery by a commercial parcel delivery company.

~~((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.

~~(e) 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-))~~ (e) Hand delivery.

(5) A document uploaded to the agency's e-filing system or an email received by the agency after 5:00 p.m. is considered filed on the following business day.

(6) On the same day that filing and service of documents is completed under subsection (3) of this section, the person who completed service ((shall)) must take one of the following actions:

(a) Obtain ((an acknowledgment of service from the person who accepted personal service)) the confirmation of filing and service upon the recipient(s) generated by the agency's e-filing system under subsection (4) (a) of this section((; or)).

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

(i) ((Personally delivering a copy under subsection (4)(a)) Electronically transmitting a copy under subsection (4)(b) of this section; ((or))

(ii) Mailing a copy under subsection (4) ((b)) (c) of this section; ((or))

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

(iv) ((Electronically transmitting the documents under subsection (4)(d) or (e)) Personally delivering a copy under subsection (4)(e) of this section.

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

(7) 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 subsection (6)(a) of this section, a certificate of service made under subsection ((5)) (6)(b) of this section ((shall)), or an acknowledgment of service obtained under subsection (6)(c) of this section constitutes proof of service.

NEW SECTION

WAC 391-08-155 Adjudicative proceedings—Dispositive prehearing motions. Unless controlled by WAC 391-08-180, 391-25-170, 391-25-190, 391-45-070, 391-45-210, or 391-45-250, all prehearing motions must 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 after the answer has been filed. The presiding officer shall establish a schedule for any non-moving party to respond to the motion and for the moving party to file a brief in reply to the response(s).

(2) If a hearing date(s) has been established, all dispositive prehearing motions must be filed with the presiding officer at least 65 days before the first hearing date, unless the presiding officer deems the time frame waivable for good cause shown.

(a) When a dispositive prehearing motion is filed, any nonmoving party may file and serve a response to the motion within 21 days from the date on which the motion was filed.

(b) When a response to the dispositive prehearing motion is filed, the moving party may file and serve a reply to the response within seven days from the date on which the response was filed.

(c) The presiding officer must rule on or respond to the motion at least 21 days before the first hearing date.

(3) All motions must 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.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-08-180 Continuances. (1) Postponements, continuances, extensions of time, and adjournments may be ordered (~~by the presiding officer on his or her~~) on the presiding officer's own motion or may be granted on the 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~~) must 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 written submissions to receive argument and to rule on the request.

AMENDATORY SECTION (Amending WSR 98-14-112, filed 7/1/98, effective 8/1/98)

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.~~

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

WAC 391-08-310 Subpoenas—Form—Issuance to parties. The power of subpoena is 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~~) must:

(a) State the name of the agency as(~~the~~) 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.

(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~~) that person's control at the time and place set for the hearing(~~, except no subpoena shall~~). No subpoena shall be issued or given effect to require the attendance and testimony of, or the production of evidence by, (~~any~~) a member of the commission or (~~any member of the~~) agency staff in any proceeding before the agency.

(3) Upon a showing of general relevance and reasonable scope of the testimony or evidence sought, subpoenas may be issued by the commission or (~~its~~) a 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~~) 18 years of age(~~or~~) by exhibiting and reading it to the witness, (~~or~~) by giving (~~him or her~~) the witness a copy of the subpoena, or by leaving a copy of the subpoena at (~~the place of his or her~~) the witness's abode or usual dwelling place. When service is made by any person other than an officer authorized to serve process, proof of service (~~shall~~) must be made by affidavit or declaration under penalty of perjury.

(6) The party (~~which~~) that 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~~) must be at the rates and terms allowed by the superior court for (~~Thurston County~~) the county the witness is in when the hearing occurs.

(b) Witnesses (~~shall be~~) are 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))~~ may be enforced as provided in RCW 34.05.588(1).

AMENDATORY SECTION (Amending WSR 98-14-112, filed 7/1/98, effective 8/1/98)

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 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))~~ must be paid by the party ~~((which))~~ that 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.

AMENDATORY SECTION (Amending WSR 12-05-066, filed 2/15/12, effective 3/17/12)

WAC 391-08-520 Declaratory orders. Any person may petition the commission for a declaratory order~~((r))~~ under RCW 34.05.240~~((r))~~ with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the ~~((commission))~~ agency. For purposes of this section, the term person includes natural persons, employee organizations, and employers.

(1) A petition for a declaratory order ~~((shall))~~ must generally adhere to the following form:

(a) At the top of the page ~~((shall))~~ must appear the wording "Before the Public Employment Relations Commission," a caption setting out "In the Matter of the Petition of (name of petitioner to be inserted) for a Declaratory Order," and the title "Petition."

(b) The body of the petition ~~((shall))~~ must set out, in numbered paragraphs:

(i) The name, email address, and mailing address of the petitioner and ~~((the name and address, if any,))~~ of the petitioner's representative ~~((appearing on behalf of the petitioner.)), if any;~~

(ii) The name(s), email address(es), and mailing address(es) of any other party ~~((which))~~ that the petitioner seeks to have bound by any declaratory order issued by the commission, and the name(s), email address(es), and mailing address(es) of ~~((their))~~ those parties' representatives, if known~~((r))~~;

(iii) The rule(s), order(s), or statute(s) from which the controversy arises~~((r))~~;

(iv) The facts ~~((which))~~ that the petitioner wishes the commission to consider ~~((in issuing a declaratory order.))~~;

(v) The issues (~~(which)~~) that the petitioner wishes the commission to address (~~(in its order.)~~);

(vi) The relief requested by the petitioner(~~(-)~~); and

(vii) The reasons on which the petitioner relies to show that(~~(-)~~) uncertainty necessitating resolution exists; there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion; the uncertainty adversely affects the petitioner; and the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested.

(c) The petition (~~(shall)~~) must be filed (~~(at the commission's Olympia office)~~) and served as required by WAC 391-08-120(~~(-1)~~), and copies shall be served on other parties named in the petition as required by WAC 391-08-120 (3) and (4)).

(2) Within (~~(fifteen)~~) 15 days after receipt of a petition for a declaratory order, the executive director or designee shall give notice of the petition to all persons to whom notice is required by law(~~(-)~~) and may give notice to any other person (~~(he or she)~~) the executive director or designee deems desirable. The notice (~~(shall)~~) must establish a deadline for necessary parties other than the petitioner to file written consent to the determination of the matter by a declaratory order.

(3) The petition and any responses from parties (~~(shall)~~) must be forwarded to the commission for consideration. The commission (~~(shall)~~) may not issue a declaratory order if:

(a) The matter is or could have been the subject of any other adjudicative proceeding before the commission; or

(b) A necessary party whose rights would be substantially prejudiced does not consent, in writing, to the determination of the matter by a declaratory order.

(4) The commission may consider the petition without argument and shall, within (~~(thirty)~~) 30 days after receipt of the petition, do one of the following:

(a) Enter an order declaring the applicability of the (~~(statute-)~~) rule, (~~(or)~~) order, or statute in question to the specified circumstances;

(b) Set a reasonable time and place for a hearing to be held within (~~(ninety)~~) 90 days after receipt of the petition, including submission of evidence by the parties if deemed necessary by the commission(~~(-)~~) or submission of written argument (~~(upon the matter)~~) if the material facts are not in dispute. The commission shall give seven days' or more advance written notice to the petitioner and other persons who have been given notice of the petition (~~(pursuant to)~~) under subsection (2) of this section of the time, date, and place for the hearing or submission and of the issues it will be considering;

(c) Set a specified time within (~~(ninety)~~) 90 days after receipt of the petition (~~(by which)~~) when it will enter a declaratory order; (~~(or)~~)

(d) Decline to enter a declaratory order, stating the reasons for its action.

(5) The commission may extend the time limits of subsection (4) (b) and (c) of this section, for good cause.

(6) The commission may, at any time before taking final action on a petition under this section, request submission of additional facts or argument, (~~(including)~~) which may include setting the case for oral argument.

(7) If the commission proceeds in the manner provided in subsection (4)(b) of this section, it shall within a reasonable time after conclusion of the proceeding:

(a) Issue a declaratory order; or

(b) Notify the petitioner and any other party to the proceeding that no declaratory order will be issued and state the reasons for ~~((such))~~ that action.

(8) A declaratory order entered by the commission or a decision to decline to enter a declaratory order ~~((shall))~~ must be in writing ~~((, and shall))~~ and be served ~~((upon))~~ on all parties identified in subsection (2) of this section. Each declaratory order ~~((shall))~~ must contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusions.

~~(9) A declaratory order ((has the same status as any other order entered in an adjudicative proceeding conducted by the commission.~~

~~(10) In the event a declaratory order is filed involving the application of the provisions of chapter 47.64 RCW, the marine employees' commission shall act in place of the commission)) is a final agency order.~~

AMENDATORY SECTION (Amending WSR 90-06-070, filed 3/7/90, effective 4/7/90)

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

AMENDATORY SECTION (Amending WSR 12-05-066, filed 2/15/12, effective 3/17/12)

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, 391-35, 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 employ-~~

ees 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.~~

~~(3-)) (1) 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))~~ 25 pages in total length (double-spaced, 12-point type); and

(vi) File the amicus brief with the commission within ~~((fourteen))~~ 14 days following the filing and service of the parties' briefs ~~((of the parties,))~~ and serve copies of ~~((any such))~~ the amicus brief on each of the original parties ~~((in))~~ to 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))~~ an extension.

(c) The original parties to the case may, within ~~((fourteen))~~ 14 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.

~~((4-)) (2) 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))~~ 30 days following the issuance of the order.~~

AMENDATORY SECTION (Amending WSR 16-19-058, filed 9/19/16, effective 10/20/16)

WAC 391-08-650 Case docketing and numbering. The agency maintains a ~~((computerized))~~ case docketing and numbering system ~~((which~~

is used to) that tracks and manages all requests for ((the)) dispute resolution services ((provided by the agency)).

(1) Each case ((processed by the agency is identified by)) is assigned an alphanumeric identifier that includes a unique sequential number ((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), an alphabetic letter signifying the type of dispute being processed, and a number indicating the calendar year in which the case was filed.~~

(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.

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 or four components, as follows:

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

(b) The second component (where appropriate) ~~((consisting of an alphabetic code in ascending))~~ is a letter in consecutive alphabetical order ~~((,))~~ and indicates the second and subsequent decisions issued in the case ~~((to which the numerical component was originally assigned)).~~

(c) The third component ~~((, consisting of a four-letter alphabetic code,))~~ is a group of four alphabetical letters that 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)) (Public Four-Year Institutions of Higher Education—Faculty Labor Relations).

"MRNE" ~~((indicates cases decided under))~~ - Chapter 47.64 RCW ((relating to the Washington state ferries system)) (Marine Employees—Public Employment Relations).

"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).

(d) The fourth component is the year in which the decision was issued.

(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))~~ must conform to the formats specified in this section:

GENERAL RULE: Citations ~~((shall))~~ must 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))~~ parentheses).

Examples: *City of Roe*, Decision 12345 (PECB, ~~((1992))~~ 2022)
City of Roe, Decision 12345-A (PECB, ~~((1993))~~ 2022)
City of Roe, Decision 12345-B (PECB, ~~((1994))~~ 2022)

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))~~ must list the name of the union (in ~~((parenthesis))~~ parentheses) following the name of the employer.

Example: *City of Roe (Doe Union)*, Decision 23456 (PECB, ~~((1995))~~ 2022)

(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)))~~ 42.56.070(5), the agency publishes its decisions, together with a search engine, on its website at ~~((:"))~~ www.perc.wa.gov ~~(("))~~.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 391-08-190	Prefiling of collective bargaining agreements.
WAC 391-08-630	Agency structure—Substitution for executive director.
WAC 391-08-800	Agency records—Public records officer—Contact information.
WAC 391-08-810	Agency records—Confidentiality.
WAC 391-08-820	Agency offices.
WAC 391-08-830	Agency records—Availability—Organization—Requests.
WAC 391-08-840	Processing of public records requests.
WAC 391-08-850	Processing of public records—Electronic records.
WAC 391-08-860	Exemptions to public records.
WAC 391-08-870	Costs for providing public records.
WAC 391-08-880	Review of denial of public records.