

BOARD RULES

(Officially Adopted by The Board on January 19, 2024)

Rule Number 1: Procedures

A. Meetings

A quorum for transaction of board business shall consist of at least a majority of the members, which shall include not less than a majority of the citizen members.

B. Filing of Complaints

(1) The board shall resolve complaints alleging violations of chapter 42.52 RCW in accordance with these rules.

(2) Complaints may be filed by any person, personally, or by his or her attorney, or the board.

(3) The parties to the complaint are the respondent and the board. The Board reserves the right to permit an appeal to proceed in a situation in which the complainant has been directly affected by the actions of the respondent.

(4) Although complaints need not be submitted on a prescribed form, the information submitted must include all information appearing on the form .

(5) The complaint form or information alleging a violation may be sent via the USPS to board staff at the address located on the form or may be scanned and the scanned copy submitted via email to board staff at the email address located on the form. The online process for submitting complaints is the preferred method by which complaints are filed.

(6) If the complainant is claiming whistleblower protection under RCW 42.52.410, he or she must check the appropriate box on the complaint form. Upon receipt of a complaint in which the complainant is claiming whistleblower protection, board staff must determine whether the complainant qualifies for whistleblower protection. If whistleblower protection is appropriate, board staff must redact the complainant's name and any other identifying information before forwarding the complaint to the board members and the respondent.

(7) If the complainant is not claiming whistleblower protection, or if board staff determines the complainant is not eligible for whistleblower protection, the unredacted complaint shall be forwarded to both the board members and the respondent.

(8) Upon receipt, complaints shall be assigned a reference number. The board shall maintain and keep current for public inspection a status sheet which shall contain with respect to each complaint: Its reference number, the date received by the board, and its present status, including the date of any hearings scheduled. Unless the complainant qualifies for whistleblower protection, the name of the complainant and the person charged shall be entered on the status sheet following the determination of reasonable cause provided for in section F. of this rule.

C. Investigation of Complaints

(1) On each complaint, the staff shall first conduct a jurisdiction investigation for the purpose of determining whether the board has personal and subject-matter jurisdiction. If the staff concludes that the complaint is within the jurisdiction of the board, the staff shall commence an investigation of the allegations. If the staff concludes that the complaint is not within such jurisdiction, the staff shall end the investigation and dismiss the complaint subject to section D. of this rule.

(2) If the complaint alleges a violation of RCW 42.52.180 by a legislator, the board may provide the complaint to the attorney general or to an external investigation firm for investigation of such allegation by the attorney general. For purpose of such investigation, the attorney general shall serve as the board's staff.

(3) If the board counsel has a conflict in conducting an investigation of an alleged violation of the Act, the board may refer the complaint to an external investigation firm to complete the investigation.

(4) The results of each investigation shall be reduced to writing and included in an investigative report which shall be provided to the board for the purpose of making a determination under section F. of this rule. If the board desires more information, it may require the staff to investigate further. The results of such additional investigation shall also be reduced to writing and included in an investigative report. The written investigation results, whether conducted by staff or an external firm, are confidential.

D. Staff Dismissal of Complaints

(1) Subject to subsection (D)(2) of this rule, the staff may dismiss the complaint for the following reasons:

- (a) The alleged violation is not within the personal or subject matter jurisdiction of the board;
 - (b) The complaint is unfounded or frivolous. For purposes of this section, “unfounded” means the facts as alleged are insufficient to find a violation; or
 - (c) The complaint presents a violation of chapter 42.52.RCW, but any violation that may have occurred does not constitute a material violation because it was inadvertent and minor, or has been cured, and after consideration of all the circumstances, further proceedings would not serve the purposes of chapter 42.52 RCW.
- (2) The staff shall provide notice by electronic mail to each board member of the staff’s intent to dismiss the complaint. If any board member objects to the staff’s dismissal within ten (10) calendar days after staff has sent the notice, the complaint will be deliberated at the next regularly scheduled meeting of the board.
- (3) If a timely objection to the staff’s dismissal is not received from any board member within the 10 day period, a copy of the staff’s order of dismissal will be provided to the complainant and the respondent along with a statement of the complainant’s right to request review by the board of the staff’s dismissal.

E. Review of Staff Dismissal Order

- (1) Staff must provide complainants with written notice of their right to request the board to review the staff’s dismissal of the complaint.
- (2) If the complainant requests such a review, the request must be in writing and received by the board staff within 30 calendar days after the date upon which the order of dismissal is mailed to the complainant.
- (3) When a request for review is received, staff will prepare a record for board review and notify the respondent that a review has been requested. The record will consist of the following items:
- (a) The complaint;
 - (b) The investigation report;
 - (c) The order of dismissal;
 - (d) The complainant’s request for review;
 - (e) Staff’s response to the request for review; and
 - (f) Any additional material requested by the board chair or the chair’s designee.

(4) At the next available opportunity, the board will review the record and deliberate in closed session, without oral argument, and act upon the review request by:

- (a) Affirming the dismissal;
- (b) Directing the staff to conduct further investigation; or
- (c) Issuing a determination that there is reasonable cause to believe that a violation has been or is being committed.

(4) In reviewing the staff's order of dismissal, the board will decide the matter de novo.

(5) The board's decision will be in writing, provided to the complainant and respondent and published on the legislative ethics board website.

F. Determination of Reasonable Cause

(1) The board shall review the investigative report and shall determine whether the complaint is within its jurisdiction and, if so, whether there is reasonable cause to believe that a violation has occurred. The Board's review of the investigative report as well as the determination of reasonable cause shall be made during executive session.

(2) If the board determines that the complaint is not within its jurisdiction or that there is not such reasonable cause, it shall issue an order dismissing the complaint, and shall notify the complainant, the respondent, the news media and others who have requested notice of the board's actions with a copy of the published opinion.

(3) If the board determines that the complaint is within its jurisdiction and that there is such reasonable cause, the board shall conduct or provide for conducting a public hearing on the complaint.

G. Stipulation and Settlement

(1) Any matter before the board may be settled by stipulation after completion of the investigative report. Settlement of a matter shall be concluded by a stipulation of facts, conclusions and penalty.

(2) After the board determines there is reasonable cause to believe a violation of the Ethics Act has occurred, the board staff shall prepare an opinion for the board and include as part of the opinion a stipulation.

(3) The opinion which shall include the stipulation shall be provided to the respondent for signature.

(4) Board staff shall provide respondent with an electronic copy of the stipulation by email as well as with a hard copy of the stipulation by USPS mail.

(5) After the respondent receives the stipulation, he or she has 30 calendar days from the date the stipulation is sent within which to sign and return the stipulation to the board. A scanned signature on the stipulation is acceptable. The 30-day period shall start from the date the electronic or hard copy is sent, whichever occurs first. If the signed stipulation has not been received by the board within the 30-day period, the stipulation shall be withdrawn.

(6) Once signed, the stipulation shall become part of the public record.

H. Notice of Hearing and Respondent's Answer

(1) The board shall provide notice of the public hearing to the board's determination of reasonable cause, the respondent, and news media and others who have requested notice of the board's actions.

(2) The notice shall include the board's determination of reasonable cause, as well as the date, time and place for the hearing. The notice shall provide that the respondent shall be entitled to appear in person or otherwise, with or without counsel, submit testimony, be fully heard, and cross-examine witnesses.

(3) The board shall determine whether the hearing is to be conducted by an administrative law judge.

(4) The respondent shall be notified of the date of the hearing no later than forty-five days before the hearing date. At the request of the respondent, the board or the administrative law judge may move the hearing to an earlier date.

(5) The respondent shall file a written answer to the complaint not later than thirty days after service of the notice of hearing. The board or the administrative law judge may extend the time for an answer, on a showing of good cause. Absent a showing of good cause, failure to file a written answer shall be deemed an admission to the facts alleged in the complaint and the board may enter a default judgment which shall be final.

I. Conduct of Hearings

(1) From the time the board issues notice of a public hearing on a complaint, the proceeding shall be conducted pursuant to the Administrative Procedure Act (chapter 34.05 RCW), except as modified by chapter 42.52 RCW or these rules. Prior to the issuance of such notice, the board's consideration and disposition of a complaint shall not be considered an adjudicative proceeding. In the case of a

conflict between Chapter 34.05 RCW and these procedures rules, the procedures rules adopted by the board shall take precedence.

(2) All hearings conducted under this section are open to the public. The board's deliberations on a complaint that do not occur during a public hearing are confidential.

(3) A hearing shall be conducted either by the board or by an administrative law judge. If an administrative law judge participates, the board may choose to sit with the administrative law judge to hear the matter and to enter a final order at the conclusion of the proceedings. The board may also opt to have the administrative law judge hear the matter alone and prepare an initial order for review by the board. If an administrative law judge sits with the board, he or she shall rule on procedural and evidentiary matters.

(4) Parties to a complaint proceeding shall be the respondent and the staff assigned to present the case in support of the complaint pursuant to RCW 42.52.430(2). Parties are subject to the *ex parte* restrictions stated in RCW 34.05.455.

(5) When a complaint has been filed with the board, neither the complainant, if other than the staff, nor any other person shall have special standing to participate or intervene in the investigation or consideration of the complaint by the board.

(6) The staff assigned to investigate a complaint pursuant to RCW 42.52.420 may be subsequently assigned as adviser(s) to the board following a determination of reasonable cause, without regard to the restrictions of RCW 34.05.455 and .458.

(7) The board may subpoena witnesses, compel their attendance, administer oaths, take testimony of a persons under oath, and require production for examination of any books, papers, documents or tangible things relating to any matter under investigation or in hearing before the board. The subpoena shall:

(a) Specifically describe the testimony which is sought; and materials to be produced, in the form of designated books, papers, documents or tangible things under control of the witness;

(b) Set forth a reasonable time and place for the taking of testimony and production of the materials; and

(c) Notify the person who has been subpoenaed that if the testimony is not given or designated materials are not produced, the board will apply to the superior court for an appropriate order or other remedy. The subpoena may be personally delivered or sent by certified mail, return receipt requested.

(8) Without prior approval by the assigned administrative law judge or by the board if an administrative law judge has not been assigned, no party shall have the right to issue subpoenas; or to demand interrogatories, depositions, or other forms of discovery, without prior approval by the board.

(9) The board may conduct all or part of the hearing by telephone or other virtual means, if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

(10) The time limits stated in RCW 34.05.419 shall not apply to board complaint proceedings.

(11) Service of notices, filings, pleadings and other papers may be made personally or by first-class, registered, or certified mail; by electronic telefacsimile transmission and same-day mailing of copies; or by commercial parcel delivery company. Service by mail shall be regarded as completed upon deposit in the United States mail properly stamped and addressed. Service by electronic telefacsimile transmission shall be regarded as completed upon production by the telefacsimile device of confirmation of transmission. Service by commercial parcel delivery shall be regarded as completed upon delivery to the parcel delivery company with charges prepaid. Service by electronic transmission is authorized for all hearings in accordance with RCW 34.05.010(19). A respondent to a proceeding must provide a valid email address in their answer to the board's determination of reasonable cause, and if not in their answer, by the time of the prehearing conference. The respondent must monitor this email address throughout the hearing process for the purposes of accepting and providing service of process. Service of pleadings and other documents is deemed complete upon transmission to the email address provided by the parties.

J. Prehearing Conferences

(1) In any proceeding, the board on its own motion or upon request by a party or the party's authorized representative, may direct the parties to appear at a specified time and place for a conference to consider:

- (a) Simplification of issues;
- (b) The necessity of amendments to the hearing notice;
- (c) The possibility of obtaining stipulations, admissions of facts and of documents;
- (d) Limitation on the number of witnesses; and

(e) Procedural and such other matters as may aid in the disposition of the proceeding.

(2) Prehearing conferences may be presided over by the board or an administrative law judge.

(3) Prehearing conferences may be held at a time and place, or by telephone, television, or other electronic means, as specified by the presiding officer.

(4) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken and decisions made at the conference. If no objection to the order is filed with the presiding officer within seven days after the date the order is mailed, the order shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

K. Final Order in Complaints

(1) If the board in its final decision determines that the person has committed a violation, it shall issue an order stating its findings of fact, conclusions of law, and specifying such penalty or remedial action as the board finds appropriate. If the board in its final decision determines that the person has not committed a violation, it shall issue an order stating its findings of fact, conclusions of law, and dismissing the complaint.

(2) Notification of the results of final orders in complaint cases shall be accomplished by simultaneous mailing or emailing to the complainant and respondent. If the notification is being sent by email, other distribution to the media and others who have requested notice of the board's action may occur the same working day. If the notification is being sent by USPS mail, the other distribution shall occur the following working day.

(3) Following a hearing in which the board participates, the board shall:

(a) Set forth in writing its findings of fact, conclusions of law and a decision on the merits of the case; and

(b) Deliver, either in person or by email or mail, to the respondent, complainant, and news media and others who have requested notice of the board's actions, a copy of the board's opinion.

(4) Following a hearing in which the board does not participate, the administrative law judge shall:

(a) Set forth written findings of fact, conclusions of law and decision on the merits of the case in an initial order;

(b) Deliver, either in person or by email or mail, to each party, board member, and the staff, a copy of the findings of fact, conclusions of law and

decision, including a statement of the right to request review of the initial order by the board.

(c) If neither party files exceptions to the initial order within 20 days, the board may adopt the initial order as the final order of the board.

(d) Within 20 days of entry of the initial order, either the staff or the respondent may file written exceptions to the initial order. Such exceptions shall be served on all other parties, the Administrative Law Judge, the staff, and all members of the board. The board shall set a date for submission of written argument on the exceptions and shall notify the staff and the respondent in writing.

(e) The board shall review the initial order, any exceptions and argument filed and shall issue a final order which shall be delivered, either in person or by email or mail, to the staff, the respondent, complainant, and media and others who have requested notice of the board's actions.

L. Procedures Applicable to Advisory Opinions

(1) The legislative ethics board shall issue advisory opinions with regard to the application of chapter 42.52 RCW and the rules adopted under the chapter. The following procedures apply to requests for advisory opinions:

(a) Requests for advisory opinions may be made by any legislator, legislative employee, or board member. The board may issue an advisory opinion on its own motion.

(b) Requests may also be made by other persons with respect to the application of the State Ethics Act to them.

(c) A request must be stated hypothetically unless the individual requests a specific opinion concerning his or her own conduct. Requests must be written, signed, and directed to the chair of the board in care of Board Counsel at the address published on the board's website.

(d) Requests shall supply such information as the board requires to enable it to issue the opinion. Advisory Opinions will not be issued based upon facts that have already occurred.

(e) An Advisory Opinion will not be issued unless the Board is unanimous in its decision to issue the opinion.

- (f) The identity of the person making the request shall be known only to the chair and staff of the board, unless such confidentiality is waived in the request.
- (2) The board shall either:
 - (a) Issue a written advisory opinion; or
 - (b) notify, in writing, the person requesting such opinion that the request is denied and the reason(s) for the denial.
- (3) Upon receipt, requests shall be assigned a reference number. The board shall maintain and keep current for public inspection a status sheet which shall contain with respect to each request: its reference number, the date the request was received by the board and its present status.
- (4) The staff shall notify the person requesting the opinion as to the status of the request within thirty days and at thirty-day intervals thereafter until final action is taken.
- (5) Upon request, the board shall make available to the public copies of the status sheets and advisory opinions issued by the board.

M. Procedures Applicable to Informal Advice

- (1) It is a function of board staff to provide ethics advice to persons eligible to request advisory opinions. In providing such advice, board staff should also provide a disclaimer that the advice represents solely the opinion of the staff and is not the opinion of the Board or in any respect binding on the Board.
- (2) In considering a complaint, the board will give weight to the fact that the person charged in the complaint relied in good faith on board staff's advice.
- (3) The board may review the board staff advice provided under subsection (1) of this section and may approve or disapprove of any advice so provided. However, any such approval or disapproval is limited to whether board staff had reasonable grounds for the advice and should not be interpreted as indicating that the board approves or disapproves the actual advice provided. Only advisory opinions issued by the board and complaints decided by the board may be relied on for purposes of determining how the board will interpret a provision of the State Ethics Act.

N. Designated Ethics Advisers

- (1) The Chief Clerk of the House and the Secretary of the Senate may each designate and assign legal counsel as "Designated Ethics Advisers" to assist

legislators, legislative staff and, if requested, the Legislative Ethics Board. The responsibilities of such advisers should be in accordance with this rule.

(2) No more than two such Designated Ethics Advisers may be from each legislative body and their designation and assignment should be within the sole discretion of the Chief Clerk of the House and the Secretary of the Senate, respectively.

(3) The advisers may assist legislators and employees, in their respective legislative bodies, with advice and analysis based upon legislative ethics statutes and rules and upon published opinions of the Legislative Ethics Board. In those instances where an adviser has conferred with board staff, and the staff has concurred with the proposed advice, the advice shall be deemed to be entitled to the protections afforded in Rule 1 M(2). Advice or analysis, which is not concurred in by staff, will be viewed as in-house legal advice and outside the scope of the protections provided in Rule 1 M(2). Requests for advisory opinions are appropriate in cases where designated ethics advisers and board staff disagree.

(4) The advisers are expected to serve as liaisons between their respective legislative bodies, including their chief administrative officers, and the staff, and may communicate matters of mutual concern to the Board.

(5) The advisers, in coordination and consultation with the staff, may develop and assist the staff to implement a program of ethics training and education for legislators and legislative staff.

(6) The advisers should, to the extent reasonably possible, attend Board meetings and be available and prepared to comment on matters before the Board with the exception of formal complaints. The designated advisers will not participate in the Board's review and decision making on formal complaints before the Board.

(7) The designated advisers may assist legislators and staff in the preparation of advisory opinion requests, responses to complaints, and other communication with the Board but shall not, however, represent members or staff before the Board as advocates on their behalf

Rule Number 2: "Measurable Expenditure" Defined

A. Authority for Rule.

RCW 42.52.180(2)(b) directs the ethics boards to define "measurable expenditure of public funds" in the context of a prohibition on the use of public facilities for campaign purposes.

B. Explanatory Note.

The rulemaking directive is limited to subsection (b). In order to fully understand the prohibitions and exceptions contained in this section, refer to the board advisory opinions, especially *Advisory Opinion* 1995- No. 18.

C. Text of Rule.

For purposes of RCW 42.52.180(2)(b), "measurable expenditure" has very limited application. The purpose of the measurable expenditure provision is to make it clear that the exception for statements made at open press conferences or in response to specific inquiries will, at a minimum, be construed to include statements that do not result in measurable expenditures. Consistent with this legislative intent, the definition provided in this rule does not restrict the scope of the exception for statements made at an open press conference or in response to a specific inquiry. The term is construed to include any specific cost, or specific portion of a cost, that can be reasonably determined and attributed to a statement made at an open press conference or in response to a specific inquiry and for the purpose of promotion or opposition of a ballot proposition.

(1) All statements initiated by a legislator will result in a measurable expenditure if the writing was prepared using state time, state employees or resources such as paper and equipment; or if state resources such as postage were used in delivering the statement.

(2) An oral statement initiated by a legislator will result in a measurable expenditure if its specific cost, or portion of its cost, can be reasonably determined and attributed to the statement. An oral statement constitutes a measurable expenditure if staff time or state resources were used to prepare the oral statement.

(3) Pursuant to *In re Dhingra, Randall, Shewmake, Robinson, Lovelett, Thai, Bateman, Ramel, Lekanoff, Slatter, & Rule, 2022* – Nos. 14 & 15, the use of public resources provided by another state agency can result in a “measurable expenditure.”

Rule Number 3: Private Use of Public Resources

A. Introduction

Public resources are entrusted to legislators and legislative employees to further the public interest. Appropriation of public facilities, equipment, services, and

personnel for personal benefit can undermine this trust and impedes the proper performance of government's work. At the same time, legitimate need exists for limited exceptions to this rule. Where use is incidental, infrequent, involves de minimis or no cost to the state, does not interfere with performance of official duties, and is reasonable in light of legitimate needs and expectations of the public work force, neither the public trust nor government efficiency suffers to any significant degree. This rule defines the circumstances when such limited exceptions are appropriate.

Adoption of this rule is based on the premise that all legislators and legislative employees will use good judgment to protect public resources and to fulfill the obligations stated in the policy of the Ethics Act: "State officials and employees of government hold a public trust that obligates them, in a special way, to honesty and integrity in fulfilling the responsibilities to which they are elected and appointed. Paramount in that trust is the principle that public office, whether elected or appointed, may not be used for personal gain or private advantage." This trust is grounded in the personal responsibility of each legislator and employee.

B. Purpose and Scope

This rule provides guidance on the proper use of state resources. It is not intended to cover every situation that could arise regarding such resources. Further clarifications may be sought from the board.

The Senate and House of Representatives are encouraged to adopt policies applying these principles to their unique circumstances. Nothing in this rule is intended to limit the ability of the Senate and the House of Representatives to adopt policies that are more restrictive. However, violation of a more restrictive Senate or House of Representatives policy will not necessarily constitute a violation of RCW 42.52.160, but will constitute a violation of Senate or House of Representatives policy.

C. General Rules

(1) Legislators and legislative employees may not use public resources including any person, money, or property under the legislator's or employee's official control or direction or in his or her custody for the private benefit or gain of the legislator or employee or any other person except on an incidental and infrequent basis as provided in these rules. This prohibition does not apply to the use of public

resources to benefit another person as part of the legislator's or employee's official duties.

(2) If there is no actual cost to the state or the cost is de minimis, if there is a public benefit, and if the use does not interfere with the performance of official duties, then infrequent and incidental use of state resources for private benefit may be permissible.

(i) The cost to the state is de minimis if the actual expenditure of state funds is so small as to be insignificant or negligible.

(ii) A public benefit under this rule may be direct or indirect, such as improving employee morale or activities that improve the work-related job skills of a legislator or employee.

D. Special Qualifications and Limits

(1) A legislator or legislative employee may not make private use of any state property which has been removed from state facilities or other official duty stations, even if there is no cost to the state. Use of computers which have been authorized to be taken out of the office for official purposes is permitted as an exception to this rule, to the same extent as personal use of such computers is permitted when located in a state facility or other official duty station.

(2) A legislator or legislative employee may not make private use of any state property which is consumable such as paper, envelopes or spare parts, even if the actual cost to the state is de minimis.

(3) A legislator or legislative employee may not make private use of state computers or other equipment to access a computer network or other database for personal use unless there is no cost to the state and the use does not interfere with the performance of the legislator's or the employee's official duties. Legislative electronic mail and internet uses which do not incur charges are examples of uses which meet the no-cost test.

(4) In general, a legislator or legislative employee may not make private use of state resources and then reimburse the legislature so there is no actual cost to the state. However, the Board recognizes that in some limited situations, such as legislators or employees working at remote locations, a system of reimbursement may be appropriate. Any system of reimbursement must be established by the Senate or House of Representatives in advance and must result in no cost to the state. To be valid under this rule a reimbursement system must be approved by the Board.

E. Guidelines and hypothetical examples.

(1) Questions to ask yourself:

- (i) Will my personal use of public resources result in added costs or any other disadvantage to the legislature? Am I using this resource in order to avoid personal expense?
- (ii) Are my supervisors aware of my personal use of public resources? Do I feel a reluctance to discuss this subject with my supervisor or my fellow employees?
- (iii) Am I confident that my use of legislative equipment will not compromise the security or integrity of legislative information, software, or the legislative information network?
- (iv) Are public resources being used for purposes that could be embarrassing to the legislature by creating an appearance of impropriety?

Example 1: An employee makes a local telephone call home every afternoon while on break to make sure the employee's children have arrived home safely from school. This is not an ethical violation. There is no cost to the state and since the call takes place on the employee's break it will not interfere with the performance of the employee's duties.

Example 2: An employee operates an outside business. Every day the employee makes or receives five to ten business calls using a state telephone. All of the calls are local calls. This is an ethical violation because the employee is running a business to make money using public resources.

Example 3: An employee posts a notice to sell a used car on the office bulletin board. The notice gives the employee's home telephone number for those interested in inquiring about the car. This is not an ethical violation. There is no cost to the state and posting the notice will not interfere with the performance of official duties since those who want to inquire about the car can call the employee at home.

Example 4: Once a year, during a two-week period, an employee sells candy bars to support a youth soccer team. The employee leaves the candy bars in an employee common area and employees may buy the bars at their leisure. This is not an ethical violation. There is no cost to the state and the transactions do not interfere with the performance of official duties.

Example 5: Every spring a group of employees meet at lunch time to organize an agency softball team. The meeting is held in a conference room that is not needed for agency business during the lunch hour. This is not an ethical violation. There is no cost to the state and since the meeting takes place during the lunch hour it does not interfere with the performance of the employees' official duties.

Example 6: An employee is taking a night school class and after working hours uses a legislative computer to do homework. The employee prints the homework using the office printer and personal paper. The appropriate official of the Senate or House of Representatives has determined by advance written approval that the class will enhance the employee's job skills. This is not an ethical violation. The use of the office computer and printer will result in some cost to the state; however, the cost is negligible. Since the class will enhance the employee's job skills there is a public benefit and, since the activity takes place after working hours it will not interfere with the performance of the employee's official duties.

Example 7: After working hours an employee uses the office computer and printer to compose and print reports for a private business using personal paper. This is an ethical violation. The use of the office computer and printer will result in some cost to the state. Although the cost is negligible, the employee cannot use public resources with which to operate any portion of a private business.

Example 8: An employee is in the legislative intern program and is a student at a state four-year university. When time is available, the intern uses a legislative computer to work on a paper as part of an assigned school project. The intern also communicates occasionally with the supervising professor regarding the project using email. This is not an ethical violation. The internship program is a combination education and work experience which is specifically designed by the legislature to combine academic and professional experiences. The use of work time and resources is not sufficient to interfere with legislative duties, and there is a stated public benefit.

Example 9: Legislative equipment includes a video tape player. One night an employee takes the machine home to watch videos of a family vacation. This is an ethical violation. Although there is no cost to the state an employee may not make private use of state equipment removed from state facilities or other official duty station.

Example 10: Two employees use the legislative computer network to play a game of chess via electronic mail during their lunch hour. This is not an ethical violation because there is no cost to the state and the game does not interfere with official duties.

Example 11: A legislator conducts stock trades on a state-issued laptop computer. This is an ethical violation. While conducting a stock trade may not interfere with the performance of legislative duties, the legislator may not use public resources to make money. However, occasional viewing of general stock market activity would fall within the de minimis use exception.

Example 12: For convenience, while unable to access a home computer during the legislative session, a legislator establishes an e-mail account with a private Internet provider for the receipt of personal e-mails on his or her computer. This is not an ethical violation, so long as, (1) there are no actual costs to the State for establishing or accessing the e-mail account, and (2) the personal e-mails received or sent from the account are not campaign related and (3) account activity does not interfere with the performance of legislative duties; and (4) the account is not used for private gain.

E. Private Use of Public Resources for Campaign Activity

A legislator or legislative employee may not make private use of state resources for any campaign related activity. Such a use of state resources is not authorized by this rule and may also be prohibited by RCW 42.52.180, subject to the exceptions in RCW 42.52.180(2) regarding normal and regular conduct of an elected official's office and certain permissible communications about ballot propositions.

Rule Number 4: Working Hours

A. Authority for rule

RCW 42.52.320(2)(c) directs the ethics boards to adopt rules defining “working hours for purposes of RCW 42.52.180.” RCW 42.52.180 prohibits the direct or indirect use of public facilities to assist a campaign for election of a person to an office or to promote or oppose a ballot measure. Public facilities specifically include “use of state employees of the agency during working hours.”

B. Text of rule

(1) A legislative employee's working hours are those designated or required by Senate, House of Representatives, or legislative agency work schedule policy. If an employee has a designated work schedule different from the work schedule policy, that employee's working hours are the hours approved by that employee's supervisor and the Secretary of the Senate, Chief Clerk of the House of Representatives, or administrative director of a legislative agency, as appropriate.

(2) "Working hours" do not include the time approved and designated for the employee's lunch break. Employee lunch periods are assumed to be 12:00 p.m. to 1:00 p.m., unless an employee has a designated work schedule different from the work schedule policy which has been approved by the employee's supervisor and the Secretary of the Senate, Chief Clerk of the House of Representatives, or administrative director of a legislative agency.

(3) "Working hours" do not include time in official leave status, if the leave has been approved in advance.

Rule Number 5: Infrequent Meals

A. Introduction

A legislator may accept gifts of food and beverages on infrequent occasions in the ordinary course of meals where attendance is related to the performance of official duties – RCW 42.52.150(5).

B. Scope of Rule

This rule is limited to food and beverage paid for by a registered lobbyist or lobbyist employer on behalf of a legislator. The rule does not pertain to sections of the Ethics Act which permit the acceptance of complimentary food and beverage in other circumstances. The effective date of this rule is January 1, 2015.

C. Definitions

"Infrequent occasions" means up to twelve qualifying meals total per calendar year.

"In the ordinary course of meals" means breakfast, lunch, or dinner, regardless of cost. A qualifying meal would normally occur when the guest would be expected to sit down and eat, such as in a restaurant or a private residence as opposed to, for example, a hosted reception or other broad-based occasion when attendance is

related to the legislator's official duties or the legislator is making an appearance in an official capacity.

"Attendance related to the performance of official duties" means at least some of the discussion during the meal involves legislative business.

It is presumed that qualifying meals as described in RCW 42.52.150(5), whether breakfast, lunch or dinner, include both food and a beverage and therefore they are to be counted against the maximum number of meals allowed.

Examples: *NOTE - The Ethics Act contains a number of gift exemptions for food and beverage. If one of those exemptions applies, the meal does not count toward the 12 meal limit.*

Example 1: An association which employs a registered lobbyist visits Olympia during a legislative session and invites legislators, over the lunch hour, for complimentary food and conversations about legislative issues. The food is available on a serving table and is basically self-served. While there are some tables and chairs available for the convenience of the guests the event is designed to allow the guests to mingle with one another. Complimentary food and beverage provided at the event are not subject to the statute which limits the number of meals. The Ethics Act presumes that food and beverages consumed at hosted receptions where attendance is related to a legislator's official duties may be accepted without regard to frequency (RCW 42.52.150). A setting in the nature of this buffet style reception, where guests are not expected to sit down and eat, is a hosted reception within the meaning of the Ethics Act (*Advisory Opinions* 1996 Nos. 3 and No. 15).

Example 2: A legislative committee is pursuing an interim schedule which includes an approved work session with interested stakeholders on a subject of interest to the committee. The work session will last over the lunch hour and the stakeholders, who are lobbyists for a trade organization, offer to provide the working lunch on behalf of their employer. The meal is not subject to the statute which limits the number of meals. The Ethics Act exempts from the definition of "gift" reasonable subsistence expenses paid for by a nongovernmental entity when a legislator or committee staff appears at this work session in an official capacity (RCW 42.52.010)(9d).

Example 3: Agencies of the Federal and State Government offer complimentary transportation and meals to legislators during a proposed tour of the sites of forest fires in eastern Washington. The tour is designed to acquaint the legislators with the need for increased state funding for restoration and forest fire prevention. Meals provided on the tour are not subject to the statute which limits the number of meals. Payment by a governmental or nongovernmental entity of reasonable subsistence expenses incurred in connection with a legislators appearance in an official capacity are excluded from the definition of gift (RCW 42.52.010)(9)(d).

Example 4: A legislator is invited to a complimentary dinner at the home of a lobbyist and is encouraged to bring a non-legislator guest. Although the meal is provided in a buffet-style the guests are expected to sit down and eat. Such a dinner is clearly a meal rather than a reception (Advisory Opinion 1996 No. 15). The meal is subject to the statute which limits the number of meals. The complimentary meal provided to the guest is a gift which is attributed to the legislator for the purpose of determining whether the annual gift limit has been exceeded, unless an independent business, family, or social relationship exists between the donor and the guest (RCW 42.52.150)(1).

Example 5: Members of a caucus leadership are invited to use a lobbyist's home for a meeting on legislative issues. The lobbyist is not involved in the substance of the meeting and will not be present but has provided for a complimentary dinner to be catered. The legislators have not met the calendar limit for complimentary meals from lobbyists and seek to categorize the meal as allowable under the statute which limits such meals to infrequent occasions. The meal is a gift and must be treated as a gift from the lobbyist for the purpose of determining whether the annual gift limit has been exceeded. The statute which permits gifts of meals on infrequent occasions requires that there be some discussion of legislative business, presumably the case here, and that the lobbyist-host be present (Advisory Opinion 1998 No. 5).

Example 6: A lobbyist invites a legislator to a morning meeting over a cup of complimentary coffee to discuss a legislative issue. This complimentary beverage is not subject to the statute which limits the number of meals to infrequent occasions. The statute refers to gifts of food and beverage. This rule (5) presumes that beverages of some sort accompany breakfast, lunch or dinner, but there is no

presumption that complimentary beverages are accompanied by complimentary food.

Example 7: A school PTA holds an annual fundraising auction and solicits donations to help pay for the event. Some of the donations come from registered lobbyists or their employers. The event includes a sit-down dinner, the PTA invites legislators to attend on a complimentary basis, and it uses a portion of the donations to help offset the free meals. The meals are not subject to the statute which limits meals to infrequent occasions. The Ethics Act presumes that legislators may accept gifts in the form of the cost of admission and the cost of food and beverage consumed at an event sponsored by or in conjunction with a civic, charitable, governmental, or community organization (RCW 42.52.150)(2j) PROVIDED, the entity, the PTA in this example, is the source of the invitation and determines which legislators are to be invited (*Advisory Opinion* 1996 No. 16).

Example 8: A corporate entity which employs registered lobbyists hosts a charitable fundraiser for an arts museum, the event includes a sit-down dinner, and legislators are invited on a complimentary basis. The corporation has arranged the evening so that its representatives will be present at the dinner tables with the legislators with the expectation they will discuss the corporation's industry and its legislative concerns. The meal is subject to the statute which limits the number of meals. The lobbyist employer invited the legislators (unlike Example 7), paid for their dinners, and the event involved some discussion of industry and legislative issues so that the attendance of legislators was related to official duties (RCW 42.52.150)(5) and *Advisory Opinion* 1997 No. 10).

Example 9: Following a committee meeting, a lobbyist invites some of the committee members to dinner at a local restaurant. The dinner conversation includes a discussion of a bill before the committee. In this example, if a recipient has not exceeded the calendar year limit of free meals under the statute, the lobbyist is present, and legislative business is discussed, the gift of the meal may be accepted as one of the 12 permitted under the infrequent occasions statute (RCW 42.52.150)(5) and *Advisory Opinion* 1998 No. 5).

Example 10: Various groups often request legislators to attend a legislative breakfast, lunch or dinner to discuss legislative business. These groups may include, but are limited to, labor, business, school boards, and county and local

governments. A complimentary meal provided at one of these meetings may be accepted and the meal does not count as one of the 12 permitted by the Ethics Act and this Rule. However, at a minimum, all the legislators from the legislative district in which the meeting is held must be invited. The legislators' attendance is an appearance in an official capacity and the meal is exempt from the gift rules (RCW 42.52.010(9)(d)).

Example 11: Many associations hold meetings of their members on a periodic basis and may invite legislators to address those members on pending legislative issues. A complimentary sit-down meal is provided. The meal does not count as one of the 12 permitted by the Ethics Act and this Rule because the legislators are delivering a speech or making a presentation in an official capacity pursuant to RCW 42.52.010(9)(d).

Example 12: A legislator and a lobbyist have a social relationship which involves sharing potluck dinners at the residence of one or the other. It is common for family members to attend and it is not the purpose of the occasion to discuss legislative business. Absent facts to the contrary, the Board will assume that each attendee actually provides a fair contribution to the meal so that the occasion is viewed as similar to a legislator paying for her or his own meal in a restaurant with a lobbyist present. The meal is not a gift and does not count as one of the 12.

Example 13: Some organizations, such as the 4-H and the Farm Bureau, host an annual sit-down dinner in Olympia during a legislative session and all legislators are invited to attend on a complimentary basis. The Board views these occasions, with their broad-based invitee list of all legislators, as fundamentally different from the more private restaurant and residence complimentary meals which were the impetus behind the Board's adoption of Rule 5. Attendance at these dinners is an appearance in an official capacity and the meal is not a gift pursuant to RCW 42.52.010(9)(d) and therefore does not count as one of the 12.

Rule Number 6: Penalties

A. Purpose

The purpose of this rule is to set out the criteria that the board may consider when imposing sanctions for a violation of chapter 42.52 RCW and the rules adopted under it, in accordance with RCW 42.52.320(2)(g).

B. Board May Impose Sanctions

If the board finds a violation of chapter 42.52 RCW or rules adopted under it, the board may impose one or more of the following sanctions, pursuant to RCW 42.52.480:

- (1) Reprimand, either by letter of instruction or formal reprimand;
- (2) A civil penalty of up to five thousand dollars per violation or three times the economic value of any thing sought or received in violation of chapter 42.52 RCW or rules adopted under it, whichever is greater. Payment of the civil penalty shall be reduced by the amount of costs paid pursuant to subsection (4);
- (3) Payment of damages sustained by the state that were caused by the violation and were not recovered by the state; and
- (4) Costs, including reasonable investigative costs, that do not exceed the amount of any civil penalty.

C. Criteria for Determining Sanctions

In determining the appropriate sanction, including the amount of any civil penalty, the board may consider the following factors, as well as other factors which the board may find appropriate in a particular case:

- (1) The monetary cost of the violation, including:
 - (a) The cost of the violation to the state;
 - (b) The value of anything received or sought in the violation;
 - (c) The amount of any damages incurred by the state as a result of the violation;
 - (d) The costs incurred in enforcement, including reasonable investigative costs;
- (2) The nature of the violation, including whether the violation:
 - (a) Was continuing in nature;
 - (b) Was motivated by financial gain;
 - (c) Involved criminal conduct;
 - (d) Impaired a function of the agency;
 - (e) Tended to significantly reduce public respect for or confidence in state government or state government officers or employees;
 - (f) Involved personal gain or special privilege to the violator;
- (3) Aggravating circumstances, including whether the violator:
 - (a) Intentionally committed the violation with knowledge that the conduct constituted a violation;

- (b) Attempted to conceal the violation prior to the filing of the complaint;
 - (c) Was untruthful or uncooperative in dealing with the board or the board's staff;
 - (d) Had significant official, management, or supervisory responsibility;
 - (e) Had committed prior violations found by the board;
 - (f) Incurred no other sanctions as a result of the violation;
- (4) Mitigating factors, including:
- (a) Prior corrective action taken against the violator;
 - (b) Prior recovery of damages to the state;
 - (c) The unethical conduct was approved or required by the violator's supervisor or agency;
 - (d) The violation was unintentional;
 - (e) The violator relied on advice from board staff or designated ethics advisers;
 - (f) Other mitigating factors deemed relevant by the board.

D. Payment of Civil Penalty

Payment of any monetary penalty assessed by the board must be made within 45 days of the date of the board's order, unless an extension is granted by the board. Payments are the personal responsibility of the officer or employee against whom the penalty is assessed.

E. Recommendations or Requests to Others

In addition to any sanctions imposed by the board, the board may take one or both of the following actions:

- (1) Recommend to the appropriate authorities the suspension, removal from the position, or prosecution or other appropriate remedy, as provided by RCW 42.52.470, .520;
- (2) Request that the attorney general bring an action pursuant to RCW 42.52.510 to cancel or rescind state action taken by the violator, upon a board finding that:
 - (a) The violation has substantially influenced the state action; and
 - (b) Interests of the state require cancellation or rescission.

Rule Number 7: Harassment

A. Introduction.

ESHB 2018 (2019) amended RCW 42.52.070 (special privileges) to state that it is a violation of special privileges for a legislator or legislative staff to engage in behavior that constitutes harassment, including sexual harassment.

B. Purpose and Scope.

In considering complaints that a legislator or legislative staff has engaged in behavior that constitutes harassment, the Board will apply the following substantive standards: 1. Reasonable person standard. If a reasonable person similarly situated would not view the conduct that is the subject of the complaint as constituting harassment, the Board will not view the conduct as harassment. 2. Substantial interference standard. In interpreting the provision that defines harassment as conduct that has the purpose or effect of interfering with the person's work performance, the Board will find only substantial interference to be the basis for a reasonable cause finding.

Rule Number 8: Board Procedures

A. Circulation of minutes

Meeting minutes shall be prepared in draft form, circulated to members prior to the next meeting, and included in the meeting packet. Once adopted, minutes are available on request. The minutes shall be published on the Board's website contemporaneously.

B. Recording votes

Written board opinions and board minutes will not reflect the board's vote, although any member may request his or her vote be shown in the record or move that votes be included in the minutes.

C. Advisory Opinion circulation procedures

The board may adopt final advisory opinions during board meetings or by circulation to board members. If the board decides to adopt an opinion by circulation, at least seven calendar days shall be provided for a review period. No response within the seven-day period is assumed to mean concurrence with the opinion as circulated. Non-substantive technical changes may be made without re-

circulation. Any other changes shall only be accomplished by re-circulation or consideration at the following board meeting.

D. Complaint Opinion circulation procedures

The board may adopt final complaint opinions during board meetings or by electronic circulation to members. If the board decides to adopt an opinion by circulation, at least seven calendar days shall be provided for a review period. No response by a board member within the seven-day period is assumed to mean concurrence with the opinion as circulated. Non-substantive technical changes approved by the chair may be made without re-circulation. Any change deemed substantive by the chair shall only be accomplished by re-circulation or consideration at the next board meeting.

E. Circulation of Dissents/Concurrences (Separate Opinion) in Complaint Opinions

A board member who wishes to file a Separate Opinion to the majority complaint opinion must indicate that intent during the board's discussion of the majority opinion in executive session or within the seven-day circulation period provided above. If so indicated, the written proposed Separate Opinion must be circulated to the other board members within ten days of receiving the majority opinion for review. If any board member objects to language contained in the proposed Separate Opinion, the proposed Separate Opinion shall be discussed by the full board at its next meeting. If the time for writing a proposed Separate Opinion has elapsed and a proposed Separate Opinion has not been put into circulation, the majority opinion shall be published. If the proposed Separate Opinion has been timely written and circulated and there are no objections to the language of the proposed Separate Opinion or the board members who circulated the proposed Separate Opinion do not concur with the objections of the other board members, the Separate Opinion shall be published at the same time as the majority opinion.

F. Review of contracts, grants, and employment situations with state agencies

All contracts, grants, or employment situations submitted for approval shall be made available to the board in full. Matters which are submitted for filing only shall be summarized in a report to the board at the next meeting. All contracts, grants, or terms-of-employment information shall be submitted in conjunction with an advice request form provided by the board and completed by the legislator or the legislative employee and the counsel to the board.

G. Meetings conducted by electronic means

The board may conduct meetings by telephone or other electronic means. In such cases, a link to the public portion of the meeting shall be made available on the Board's website so that the public can view the meeting.

H. Complaint Process

Prior to the board's notice of a public hearing on a complaint, board members should avoid communication with anyone other than board staff or other board members concerning a complaint that has been filed with the board or appears reasonably likely to be filed with the board. Prior to a public hearing on a complaint, and Board Rule 1.F, the board's consideration of a complaint shall be conducted in closed session. Pursuant to the ethics act and board rules, board members may not conduct an independent investigation of the facts of a complaint. It is not an independent investigation when members read documents attached to complaints or documents or materials referred to within a complaint as exhibits or supporting documentation.

I. Recusal

A member of the board shall recuse himself or herself if his or her impartiality might reasonably be questioned because of a conflict of interest or personal bias or prejudice. A legislative member of the Board should consider recusing himself or herself if a complaint is filed against a seatmate. If a legislative member becomes a respondent in an ethics complaint, that member shall not participate in any discussions or deliberations related to the complaint and must be excused from any portion of the board's meetings concerning the complaint until proceedings on the complaint are completed. If the board finds reasonable cause to believe the member has violated the act, the issue of the member's continuing participation on the board shall be referred to the member's caucus for a decision in whether the member should continue to serve on the board.