

WAC 480-07-310

Ex parte communication.

(1) **General.** RCW [34.05.455](#) and this section govern ex parte communications. After an adjudicative proceeding begins and before a final determination, no person who has a direct or indirect interest in the outcome of the proceeding, including the commission's advocacy, investigative, or prosecutorial staff, may directly or indirectly communicate about the merits of the proceeding with the commissioners, the administrative law judge, or the commissioners' staff assistants, legal counsel, or consultants assigned to advise the commissioners in that proceeding, unless reasonable notice is given to all parties to the proceeding, so that they may participate in, or respond to, the communication.

(2) **Communications not considered ex parte for purposes of this section.** The following communications are not considered ex parte:

(a) **Procedural aspects.** Communications necessary to procedural aspects of maintaining an orderly process, such as scheduling, are not ex parte communications prohibited by RCW [34.05.455](#), or by this section.

(b) **Commissioners.** The commissioners may communicate with one another regarding the merits of any adjudicative proceeding.

(c) **Commission employees and consultants.** A presiding officer may receive legal counsel, or consult with staff assistants or consultants who are subject to the presiding officer's supervision or who have not participated in the proceeding in any manner, and who are not engaged in any investigative or prosecutorial functions in the same or a factually related case.

(3) **Communication prior to service as presiding officer.** If, before serving as presiding officer in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while serving, the presiding officer must disclose the communication as prescribed in subsection (4) of this section promptly after starting to serve.

(4) **What is required if an ex parte communication occurs.** A presiding officer who receives any communication that appears to violate RCW [34.05.455](#), or this section, will place on the record of the pending matter any such written communication received, any written response to the communication, and a memorandum stating the substance of any such oral communication received, any response made, and the identity of each person from whom the presiding officer received an ex parte communication. The presiding officer will advise all parties that these matters have been placed on the record. Upon request made within ten days after notice of the ex parte communication, any party who wants to respond to the communication may place a written rebuttal statement on the record. Portions of the record pertaining to ex parte communications or rebuttal statements do not constitute evidence of any fact at issue in the proceeding unless a party moves to admit any portion of the record for purposes of establishing a fact at issue and that portion is admitted pursuant to RCW [34.05.452](#).

(5) **Sanctions.** The commission may prescribe appropriate sanctions, including default, for any violation of RCW [34.05.455](#) or this section. The commission will, and any party may, report any violation of this section to appropriate authorities for any disciplinary proceedings provided by law.