

**WAC 139-06-060 Hearing panels.** (1) The commission shall cultivate a list of qualified individuals to be appointed as members of hearing panels in certification actions.

(a) Names of qualified individuals interested in serving as panel members under RCW 43.101.380 may be submitted by any person for consideration by the commission. The commission will establish desired qualifications in policy.

(b) Commissioners will be appointed to hearing panels by the commission's governing body.

(c) Other qualified and interested individuals will submit:

(i) Hearing panel member application;

(ii) Cover letter;

(iii) Resume;

(iv) The names and contact information for three references; and

(v) Letter of support from their agency supervisor or administrator. Members of the public may submit a letter of recommendation in lieu of a letter of support.

(d) Materials shall be submitted to the commission's hearing coordinator at the following address: 19010 1st Avenue South, Burien, Washington 98148. Materials may also be submitted via email, as identified on the commission website.

(2) The commission shall review applications and submit a list of qualified individuals to the commission. The commission shall have sole discretion over the selection of panel members.

(3) Prior to the hearings panel being selected for a hearing, the commission will confirm with panelists that they have no conflicts of interest as outlined in the hearing panel member handbook. Examples of conflicts of interest include, but are not limited to, the below situations:

(a) Personal, working, and financial relationships, past or present; and

(b) Shared affiliations in groups, organizations, and activities.

(4) If a panel member is concerned that they have a conflict of interest, including a relationship with a party or a witness that would prevent the panel member from judging the case fairly, they must notify the commission as soon as possible. If the petitioner or respondent has any motion for disqualification of a panel member, the motion must be filed prior to or at the first prehearing conference.

(5) ~~((In all hearings requested under RCW 43.101.155, an administrative law judge (ALJ) appointed under chapter 34.12 RCW shall preside. The ALJ makes necessary rulings and issues a proposed recommendation but is not entitled to vote.))~~ If there is a panel member replacement prior to the hearing, parties must file a motion for disqualification within 10 days of service of notice of the replacement.

(6) A five-member hearings panel shall hear the case and will make the commission's final administrative decision based on a majority of the vote.

(7) When a hearing is requested in relation to a certification action of a Washington peace officer, the commission shall appoint to the panel:

(a) One police chief or sheriff from an agency, who is not a current or past employer of the certified officer;

(b) One certified Washington officer who is at or below the level of first line supervisor and who has at least 10 years' experience as an officer;

(c) One civilian member of the commission as appointed under RCW 43.101.030 (1)(f) and (h) through (j);

(d) One member of the public who is not a prosecutor, defense attorney, judge, or officer; and

(e) One person with expertise and background in police accountability who is not a current or former certified officer.

(8) When a hearing is requested in relation to a certification action of a Washington corrections officer, the commission shall appoint to the panel:

(a) A person who heads either a city or county corrections agency or facility or of a Washington state department of corrections facility;

(b) One corrections officer who is at or below the level of first line supervisor and who has at least 10 years' experience as a corrections officer;

(c) One civilian member of the commission as appointed under RCW 43.101.030 (1)(f) and (h) through (j);

(d) One member of the public who is not a prosecutor, defense attorney, judge, or officer; and

(e) One person with expertise and background in police accountability who is not a current or former certified officer.

(9) When a hearing is requested in relation to a certification action of a tribal police officer, the commission shall appoint to the panel:

(a) One tribal police chief;

(b) One tribal police officer who is at or below the level of first line supervisor, and who has at least 10 years' experience as an officer;

(c) One civilian member of the commission as appointed under RCW 43.101.030 (1)(f) and (h) through (j);

(d) One member of the public who is not a prosecutor, defense attorney, judge, or officer; and

(e) One person with expertise and background in police accountability who is not a current or former certified officer.

AMENDATORY SECTION (Amending WSR 24-07-042, filed 3/13/24, effective 4/13/24)

**WAC 139-06-070 Conference and hearings procedures.** (1) In all hearings requested under RCW 43.101.155, an administrative law judge (ALJ) appointed under chapter 34.12 RCW shall preside over all prehearing conferences, status conferences, and the hearing itself. The ALJ makes all necessary prehearing and hearing rulings, but is not entitled to deliberate, vote, or make any final recommendation.

(2) The attorney general's office shall represent commission staff in all adjudicative proceedings before a hearing panel.

(3) Once the commission hearings coordinator receives the request for hearing, the first prehearing conference shall be held within 14 days unless that time is extended by mutual agreement of the parties or for good cause.

(a) The ALJ shall serve timely notice of the initial prehearing conference on all parties.

(b) The notice will contain the date and time of the first prehearing conference, the sign-on information, and the names of the hearing panel members.

~~((b) Any motion for disqualification of a panel member must be filed prior to the first prehearing conference.))~~

(4) The first prehearing conference is administrative. Its primary purpose is to schedule the hearing date, which must occur within 90 days of the first prehearing conference unless that time is extended on mutual agreement of the parties or for good cause.

(a) During the first prehearing conference, the ALJ may schedule due dates for the filing of any prehearing briefs, witness lists, exhibit lists and exchange of exhibits, objections to witnesses and exhibits, and prehearing motions. The ALJ will also schedule a second prehearing conference.

(b) The ALJ shall issue a prehearing conference order within one week of the conclusion of the first prehearing conference. The prehearing conference order shall describe the action taken at the conference and the parties' agreements.

(5) The purpose of the second prehearing conference is to address the parties' evidentiary objections and ascertain the parties' readiness to proceed to hearing. Parties shall be prepared to discuss all evidentiary objections, all motions, and any remaining matters.

(a) The ALJ will make any necessary rulings on motions and evidentiary objections.

(b) The ALJ shall issue an order within 10 days of the conclusion of the second prehearing conference.

(c) After the second prehearing conference, the panel members will be provided with copies of all materials admitted into evidence, the witness lists, the statement of charges, and the briefings submitted by the parties.

(6) Failure of the respondent or the respondent's attorney to attend or participate in any scheduled prehearing conference will result in a finding of default and an order will be entered under RCW 34.05.440.

(7) Hearings may be held in-person or virtually.

(a) Once the hearing date has been set, a written notice will appear on the commission website with the date, time, and location of the hearing.

(b) Hearings are open to the public and accommodations will be made for public attendance of virtual meetings.

(c) The commission shall create audio or video recordings of all prehearing conferences and hearings.

(8) If an in-person hearing is scheduled, the hearings coordinator will provide an admitted exhibits binder including all admitted exhibits from both parties. Both parties shall use the admitted exhibits binder to reference or display any admitted exhibits during the hearing. If a virtual hearing is scheduled, the parties shall maintain control of their exhibits and, if necessary, will be required to share their screens when referencing or displaying an admitted exhibit during the proceeding. Parties are forbidden from screen sharing any portion or version of exhibits not previously admitted.

(9) If an in-person hearing is scheduled, the respondent must attend the proceeding in person. A respondent's failure to comply with this attendance requirement will result in the revocation, suspension,

or denial of certification and the hearings panel shall enter an order of default and final order under RCW 34.05.440.

(a) In-person hearings will be conducted at the training commission located at: 19010 1st Avenue South, Burien, Washington, 98148.

(b) If a virtual hearing is scheduled, the respondent shall remain visible on screen at all times the parties are on the record. A respondent's failure to comply with this attendance requirement will result in the revocation, suspension, or denial of certification and the hearings panel shall enter an order of default and final order under RCW 34.05.440.

(10) Regardless of whether a hearing is scheduled in-person or virtually, witnesses may testify at the hearing in-person, by telephone, or virtually.

(11) A five-member hearings panel shall hear the case and will make the commission's final administrative decision based on a majority of the vote.

(12) The standard of proof for certification proceedings is a preponderance of the evidence. RCW 43.101.380(1).

(13) The commission staff bears the burden of proof in actions before the hearings panel to deny, suspend, or revoke an officer's certification, or require remedial training for an officer.

(14) In an appeal of the commission's final administrative decision issued by the hearing panel, the appellant bears the burden of proof, unless otherwise provided by law.

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

**WAC 139-06-080 Filing of documents for hearings.** (1) If a hearing is to be conducted in person, an original and five copies of the opening brief, witness list, exhibit list, and exhibits are to be submitted to the commission at: 19010 1st Avenue South, Burien, Washington 98148 as outlined in the prehearing order.

(a) All hearing documents received by the commission will be shared with the petitioner, respondent, and the administrative law judge (ALJ).

(b) In addition, an electronic copy of each document shall be provided to the commission, the petitioner, the ALJ, and the respondent or their representative. Service shall be accomplished in ~~((accordance with the superior court civil rules))~~ compliance with RCW 34.05.010(19).

(2) Witness lists must include a statement of the subject matter on which the witness is expected to testify. Failure to include subject matter in such a statement may be grounds for exclusion of testimony regarding that subject matter at the hearing.

(3) The petitioner and respondent ~~((should))~~ may submit a proposed findings of fact and conclusion of law within three days of the conclusion of the hearing.

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

**WAC 139-06-110 Final order.** (1) ~~((The administrative law judge (ALJ) makes necessary rulings and issues a proposed recommendation but is not entitled to vote.~~

~~(2)))~~ The hearings panel shall enter ~~((the))~~ a final order within 90 days of the conclusion of the hearing. The commission shall serve a copy of the order to the parties and the certified officer's employing agency. It will also appear on the commission website.

~~((3)))~~ (2) The final order issued by the hearings panel shall be the final decision of the commission.

~~((4)))~~ (3) The transcripts, admitted evidence, recordings, and written decision of the hearings panel on behalf of the commission are not confidential or exempt from public disclosure and are subject to subpoena and discovery proceedings in civil actions.

~~((5)))~~ (4) The final order shall include information for respondents to petition for reconsideration or judicial review contained in RCW 34.05.510 through 34.05.598.

~~((6)))~~ (5) The commission's final order is subject to the judicial review provisions of the Administrative Procedure Act, RCW 34.05.510 through 34.05.598.