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Administrative Law

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Welcome to the Administrative Law Section's E-Newsletter!

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Inside This Issue

Recap of the 2020 Legislative Session

By Richard Potter

During the 2020 session of the Washington Legislature, the Administrative Law Section's Legislative Committee reviewed 55 bills (not counting companion bills). The areas of interest to the committee were the Administrative Procedure Act (34.05 RCW), the Public Records Act (42.56 RCW), the Open Public Meetings Act (42.30 RCW), the Office of Administrative Hearings law (34.12 RCW), and other statutes that affected administrative agency procedures, processes, hearings, rulemakings, appeals/judicial review, etc. (as opposed to the substantive law implemented by agencies). Ten bills of interest were passed by the Legislature, but the governor vetoed two of them due to their budget impacts and the financial strain being caused by the COVID-19 pandemic. The eight bills that were enacted are described below. The text of bills and committee reports are available on the Legislature's website at apps.leg.wa.gov/billinfo.

The 2020 session was the second, "short" session of the Legislature's 2019-2020 biennium. Some bills of interest were carried forward from the 2019 session. Bills that the committee reviewed and monitored included six affecting the APA and one each affecting the OPMA and the OAH law. None of these passed. The committee tracked 22 bills affecting the PRA, six of which were enacted.

Bills affecting the Public Records Act

These bills enacted exemptions to the disclosure requirements of the PRA. The Code Reviser will add these to its list of disclosure exemptions, which is available at www.atg.wa.gov/sunshine-committee (scroll down).

Senate Bill 5601 concerns the regulation of health care benefit managers. Among other things, it requires HCBMs and carriers to file contracts with the Office of the Insurance Commissioner. The bill includes an amendment of RCW 42.56.400 to exempt such contracts from disclosure.

House Bill 1888 concerns the personal information of public employees and volunteers. It amends RCW 42.56.250 to exempt from disclosure month and year of birth, photographs, and payroll deduction information held in certain personnel files (but permits the news media to have access to full dates of birth and photographs) and certain personal demographic details of individual state employees. When a governmental entity receives a request for such information, it must provide the employee, any union representing the employee, and the requestor a notice that includes a statement that the employee may seek to enjoin release of the records under RCW 42.56.540.

Senate Bill 6048 authorizes the Office of the Insurance Commissioner to supervise internationally active insurance groups or defer authority to another appropriate regulatory official. It includes an amendment to RCW 42.56.400 to exempt from disclosure certain information provided to the Insurance Commissioner.

The Administrative Law Section welcomes articles and items of interest for publication. The editors and Executive Committee reserve discretion whether to publish submissions.

Send submissions to: Bill Pardee (*Bill.Pardee@bta.wa.gov*).

This is a publication of a section of the Washington State Bar Association. All opinions and comments in this publication represent the views of the authors and do not necessarily have the endorsement of the Association or its officers or agents.

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House Bill 2327 concerns sexual misconduct at postsecondary educational institutions. It imposes a number of requirements concerning investigations. It includes adding a new section to 28B.112 RCW (Higher education; Campus sexual violence) requiring postsecondary institutions to disclose information about substantiated findings or investigations into sexual misconduct when asked for reference checks about previous or current employees (even if the prospective employer does not specifically ask for such information). It also includes adding a new section to the Public Records Act exempting from disclosure certain personal information about victims and witnesses, unless one "indicates a desire for disclosure."

Senate Bill 6499 concerns public employee retirement programs. It includes an amendment to RCW 42.56.360 to exempt from disclosure certain retiree medical information.

Senate Bill 6187 amends RCW 42.56.590(10)(a) of the Public Records Act to modify the definition of personal information with regard to notifying the public about data breaches of a state or local agency system, so that the subsection now reads "social security number or the last four digits of the social security number."

Miscellaneous

Senate Bill 6574 makes several changes to the administrative organization and responsibilities of the Growth Management Hearings Board and the Environmental Land Use and Hearings Office.

House Bill 2302 makes several changes and additions to the law concerning child support that will affect administrative proceedings involving the Department of Social and Health Service's Division of Child Support, including creating standards for the determination of income for purposes of establishing child support obligations, establishing procedures for the abatement of child support obligations for incarcerated parents, and revising provisions governing notices of child support owed and service of the hearing notices for modification of an administrative order.

Join Our Section!

We encourage you to become an active member of the Administrative Law Section. Benefits include a subscription to this newsletter and networking opportunities in the field of administrative law.

Click here to join!

The Section also has **six committees** whose members are responsible for **planning CLE programs, publishing this newsletter, tracking legislation** of interest to administrative law practitioners, and more.

Feel free to contact the chair of any committee you have an interest in for more information.

Committee chairpersons are listed on page two of this newsletter, and on the Section's website.

State Agencies' Indexes of Orders – Part 2: New DCYF Rule and Online Resource

By Richard E. Potter and John M. Gray

This is a brief update of our prior two articles that described the Public Records Act's (PRA) requirement that state agencies "by rule, establish and implement a system of indexing for the identification and location" of several types of records, including final orders in adjudicative proceedings "that contain an analysis or decision of substantial importance to the agency in carrying out its duties," which have become known as "significant decisions." RCW 42.56.070(5).

That statute specifies several minimum components that state agencies' index rules must contain. We previously just briefly noted that our review of Washington Administrative Code (WAC) titles showed that while a few agencies have index rules that fairly thoroughly follow the particulars of RCW 42.56.070(5), some agencies do not have an applicable rule at all, and most agencies' rules lack many of the required components. Our focus in our prior articles was the online availability of these indexes and/or similar resources for a sample of 12 state agencies.

Since then we have been looking in more detail at all Washington state agencies. We plan to report on the results of this research in a future article. In the meantime, a recent discovery prompts us to acknowledge the Department of Children, Youth and Families (DCYF) for its new significant decisions index rule and online resource.

DCYF was created by 2017 legislation. It oversees several services previously offered through the Department of Social and Health Services and the Department of Early Learning. The agency's rule WAC 110-03-0585 (Index of significant decisions) became effective this past January. It provides criteria for determining which decisions of the agency's board of appeals are "significant," lists several decision facets that will be used to organize the index (including subject matter, which we think is a crucial component of any useful index), and provides a process for third parties to nominate decisions to be included in the index. The rule also includes all but one of the additional components required by the statute, missing only an express statement of the schedule for revising or updating the index. As a practical matter, it will be in the agency's interest to keep its index very up to date. As the rule notes, under the statute the agency may use decisions included in the index as precedents in subsequent proceedings [see RCW 42.56.070(6)].

DCYF has created an online significant decisions resource, available at dcyf.wa.gov/board-of-appeals. As of a late May check of that website there was one decision posted. The agency advised us that it does not intend to use any of its predecessor agencies' decisions as precedents, so it is starting fresh with its own decisions.

Based on our research to date we can readily say that the new DCYF rule and online resource represent best practices for complying with the PRA's significant decisions index requirements and should provide useful information to the agency's staff, the public and private attorneys, and to the general public.

HELP WANTED

Individuals Needed for Section Executive Committee Positions and Section Publication Committees

By Bill Pardee

In October 2020, three (3) At-Large positions on the Section's Executive Committee will become vacant. If you would like to volunteer to fill one of these vacancies, the Executive Committee will consider your interest and may vote to fill an At-Large position for an initial interim term of Oct. 1, 2020, through Sept. 30, 2021. If all goes well during the first year and you are then elected, you would then be eligible to serve any remaining vacant term from Oct. 1, 2021, forward. If you are interested in filling one of these vacant At-Large positions please reach out to **Chair Robert Krabill**, whose contact information is on the first page of this newsletter.

The Section also welcomes inquiries from those who would like to **chair** the section's **Publications and Practice Manual Committee** and **Newsletter Committee**. The former assists in the publication of the Public Records Act Deskbook and supplements, and the Administrative Law Practice Manual. The latter assists in the publication of the section's quaterly newsletter. *You do not have to be a member of the Section's Executive Committee to volunteer.*

NOMINATIONS FOR THE FRANK HOMAN AWARD

By Lea Dickerson

The Frank Homan Award is presented annually to an individual who has demonstrated an outstanding contribution to the improvement or application of administrative law. Only Administrative Law Section members can nominate, but a nominee does not have to be an attorney or a section member. **Nominations for the 2020 award and 2021 award are due by June 30, 2020, and June 30, 2021, respectively.** For nominations, send an email to Lea Dickerson at lea.dickerson@oah.wa.gov, and include:

- Your name and contact information
- Information about the person being nominated (name, position, affiliation)
- Why you think this person should be recognized

The award is named for Frank Homan, a dedicated teacher and mentor who was passionate about improving the law. After receiving his law degree from Cleveland State University of Law in 1965, he began practicing in Washington in 1968, serving as an Employment Security Department hearings examiner from 1970 to 1974 and as a senior administrative law judge at the Office of Administrative Hearings from 1975 to 1993. He continued to serve as an ALJ pro tem after his retirement in 1993. He was an early proponent for the creation of a central hearings panel, and played an important role in the creation of the Office of Administrative Hearings (RCW 34.12). Frank was generous with his time and expertise and is well remembered for his sense of humor, his command of the English language, and his writing style — including his knowledge of legal terminology and history. His commitment to promoting justice for all and the practice of administrative law is the inspiration for the award that bears his name.

Past recipients of the Frank Homan Award include:

2019 Katy A. Hatfield
2017 Kim O'Neal
2016 John F. Kuntz
2015 Ramsey Ramerman
2015 Eric Stahl
2013 Alan D. Copsey
2011 Larry A. Weiser
2010 Jeffrey Goltz
2008 Kristal Wiitala
2007 C. Dean Little
2006 William R. Andersen
2005 Bob Wallis

Caselaw Update

Annette Holding LLC d/b/a Super Duper Foods v. Northwest Clean Air Agency, Division III COA Unpublished Op. (2020), 2020 WL 2731097

By Eileen Keiffer

Annette Holding, LLC challenged notices of violation sent to it by the Northwest Clean Air Agency (NWCAA) and associated penalties assessed for alleged violations of the Washington Clean Air Act, ch. 70.94 RCW and NWCAA regulations. Annette Holding asserted the notices were invalid because they listed its tradename (Super Duper Foods), rather than its limited liability company name, as the violator. The court rejected Annette Holding's contention because, among other reasons, a limited liability company is identical to its tradename.

Annette Holding owns and operates three gas stations in Washington and does business as Super Duper Foods. It constructed one of these gas stations in Conway without filing a notice of construction and application for approval with the NWCAA. In 2014, the NWCAA discovered this and informed an Annette Holding representative.[1] After much contact with this representative for Annette Holding/Super Duper Foods, the NWCAA issued two notices of imposition of penalty to Super Duper Foods.

Super Duper Foods appealed the two penalties to the Pollution Control Hearings Board (PCHB). NWCAA filed a motion to join as an additional appellant. NWCAA alleged that Super Duper Foods was not a "person" under the PCHB rules and therefore, NWCAA could not enforce the PCHB's orders without the participation of Annette Holding and additionally alleging that Annette Holding was the only "person" entitled to appeal the penalties. The individual owning Annette Holdings, LLC filed a motion to dismiss, arguing that the business license shows the business as Annette Holdings, LLC dba Super Duper Foods, and not Super Duper Foods/Chevron 306936 as the petitioner was designated in the appeal to the PCHB. PCHB denied both the motion for joinder and the motion to dismiss.

On appeal, Annette Holding argued that NWCAA acted outside of its statutory authority and jurisdiction when imposing the penalties because it issued notices of violation to a nonentity, or something that is not a "person" subject to the clean air rules. The Court of Appeals disagreed, finding that even assuming Annette Holding to be a separate entity from Super Duper Foods, Annette Holding nevertheless held liability for substantive law violations of the Clean Air Act because it owned the property, pursuant to RCW 70.94.040. The court referenced that the federal clean air act imposes strict liability on owners and operators who violate the act, and Washington

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law does not require proof of knowledge, simply proof of causation in order to assess a violator with penalties.

The court also found that even if NWCAA only gave notice to Super Duper Foods, that also gave sufficient notice to Annette Holding, LLC, because Super Duper Foods is the tradename for Annette Holding. The law does not recognize a distinction between a legal entity and its tradename. Finally, the court did not address Annette Holding's other contention that the initial notice of violation was void because the court found the notices of violation extended to and bound Annette Holding.

1 The owner of Annette Holding later disputed whether the person that the NWCAA had contact with fully represented Annette Holding, despite the fact that such person was the owner's son and had authority to use the corporate credit card and issue checks.

Ehrhart v. King County, ___ Wn.2d ___, 460 P.3d 612 (2020)

By Bill Pardee

Unanimous 9-0 opinion authored by Chief Justice Stephens

Hantavirus is a rare and serious infection transmitted by deer mice through their droppings. It initially presents with flu-like symptoms such as fever and chills but can quickly progress to life-threatening respiratory complications. In 2016, there were 40 reported cases of hantavirus in Washington.

In November 2016, a woman living near Issaquah contracted hantavirus. She went to the urgent care facility at Group Health Cooperative, where she was treated for nausea and discharged. She returned to Group Health the next day after her condition deteriorated and was then admitted as a patient at Overlake Medical Center. She then spent several days in a coma, but ultimately survived. In December 2016, Overlake notified King County of that patient's case and it promptly assigned a public health nurse to conduct an investigation. The investigation indicated the patient likely contracted hantavirus on her own property. Because she had not traveled out of the area and the likely source of hantavirus exposure was confined to her rural land outside Issaquah, King County determined there were no other likely exposures and concluded that a health advisory was not warranted. But the patient's husband repeatedly shared with King County his concerns that a potential cluster of hantavirus in the area could lead to more exposures.

In February 2017, Brian—who also lived near Issaquah—came to the emergency room of Swedish Medical Center with fever, chills, vomiting, and a persistent cough. The emergency room physician discharged Brian with instructions to return if his symptoms worsened. The next day, Brian was rushed to the emergency room at Overlake—several of his organs were already failing. Brian died shortly thereafter.

In June 2018, Sandra Ehrhart filed suit on behalf of herself and Brian's estate against King County, the emergency room physician, and Swedish Medical Center, alleging their negligence caused Brian's death. Ehrhart argues WAC 246-101-505, which requires King County to "[r]eview and determine appropriate action" whenever it receives reports of certain serious conditions, created a duty and that King County breached that duty by failing to issue a health advisory after it learned of the November 2016 case. King County asserted the public duty doctrine in its answer.

Ehrhart moved for partial summary judgment, asking the court to strike several of King County's defenses, arguing, among other things, that the "failure to enforce" and "rescue doctrine" exceptions to the public duty doctrine applied. The trial court did not consider King County's cross motion for summary judgment alongside Ehrhart's motion for summary judgment during oral argument in September 2018. After that argument, the court ruled from the bench before issuing a brief written order. The court began by stating it "ha[d] this sense of for[e]boding" because "[t]he public duty doctrine frustrated [the court] for years." The court then briefly analyzed WAC 246-101-505 and concluded it contained both a "mandatory" provision and a provision that provided for the exercise of limited discretion. The court determined King County had discretion, but only to act "appropriately." Because the court did not "know what is appropriate" in the circumstances, it decided that question "necessarily requires some kind of a factual analysis." Despite recognizing that "[d]uty is always supposed to be a legal issue," the court decided to treat "duty as being partially legal and partially factual." So the court ruled "that there is a mandatory duty" for King County to "review and determine" appropriate action, but that "the jury needs to decide whether what the County did was or was not appropriate." The trial court granted partial summary judgment for Ehrhart on the failure to enforce exception, "conditioned on a finding by the jury that [King] County's action was not appropriate." King County then moved for direct discretionary review by the Washington Supreme Court, which the latter granted.

The case law requires us to once again examine the public duty doctrine. We appreciate the trial court's efforts to struggle with the case law. We ultimately conclude, however, that the doctrine clearly applies in this case and precludes Ehrhart's claims against King County.

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Ehrhart claims King County negligently handled the December 2016 report of a nonlethal hantavirus case and is therefore liable in tort. To prevail on a negligence claim, a plaintiff must show, among other things, (1) the existence of a duty to the plaintiff. The question of duty is dispositive—no defendant is liable for negligence unless he is under a legal duty to use care. Whether the defendant is a governmental entity or a private person, to be actionable, the duty must be owed to the injured plaintiff, and not one owed to the public in general. *Taylor v. Stevens County*, 111 Wn.2d 159, 163, 759 P.2d 447 (1988).

Ehrhart argues WAC 246-101-505, which requires King County to "[r]eview and determine appropriate action" whenever it receives reports of certain serious conditions, creates a duty that King County breached by failing to issue a health advisory after it knew of the November 2016 hantavirus case. In response, King County claims the public duty doctrine bars Ehrhart's claims because the duty King County owes under WAC 246-101-505 is one it owes to the public in general and not to Brian as an individual. Ehrhart replies that the failure to enforce exception to the public duty doctrine applies because King County failed to take appropriate action under WAC 246-101-505.

Under WAC 246-101-505, King County owes a duty to the public as a whole. Because no exception applies in this case, the public duty doctrine bars Ehrhart's suit.

The public duty and discretionary immunity doctrines often arise in the same cases, and we have not always made the distinction between them clear. See *Munich v. Skagit Emergency Commc'ns Ctr.*, 175 Wn.2d 871, 885-86, 288 P.3d 328 (2012) (Chambers, J., concurring).

The public duty doctrine stands for a basic tenet of common law: "A cause of action for negligence will not lie unless the defendant owes a duty of care to [the] plaintiff." *Chambers-Castanes v. King County*, 100 Wn.2d 275, 284, 669 P.2d 451 (1983). A plaintiff must show the duty breached was owed to an individual and was not merely an obligation owed to the public. *Beltran-Serrano v. City of Tacoma*, 193 Wn.2d 537, 549, 442 P.3d 608 (2019). The public duty doctrine guides a court's analysis of whether a duty exists that can sustain a claim against the government in tort. The doctrine comes into plat when special government obligations are imposed by statute or ordinance. When laws impose duties on government not imposed upon private persons or corporations, courts must determine whether governments owe those duties to an individual or the public as a whole.

The traditional rule is that a regulatory statute imposes a duty on public officials which is owed to the public as a whole, and that such a statute does not impose any duties owed to a particular individual which can be the basis for a tort claim. *Baerlein v. State*, 92 Wn.2d 229, 231, 595 P.2d 930 (1979). This traditional rule became known as the public duty doctrine.

Our precedent recognizes four exceptions to the public duty doctrine that provide for liability even in the face of otherwise public duties. These exceptions are: (1) Legislative intent; (2) failure to enforce; (3) the rescue doctrine; and (4) a special relationship. An enumerated exception is not always necessary to find a duty owed to an individual and not to the public at large. The enumerated exceptions simply identify the most common instances when governments owe a duty to particular individuals, and they often overlap. But whether a court is evaluating the public duty doctrine generally or one of its exceptions specifically, the fundamental question remains the same: Does the government owe a duty to the plaintiff individually or merely to the public as a whole?

The public duty doctrine is distinct from the discretionary immunity doctrine and addresses fundamentally different concerns. While the public duty doctrine involves questions of duty rooted in common law tort principles, discretionary immunity is rooted in separation of powers principles inherent in our constitutional system of government. And while the public duty doctrine developed from tort principles of common law, the discretionary immunity doctrine emerged in response to Washington's waiver of its sovereign immunity in the 1960s. *See Evangelical United Brethren Church of Adna v. State*, 67 Wn.2d 246,253, 407 P.2d 440 (1965). The trial court conflated the public duty doctrine with the discretionary immunity doctrine and so infused its ruling on a claimed exception to the public duty doctrine with irrelevant issues of executive branch discretion. Properly understood, the failure to enforce exception urged by Ehrhart is unconcerned with discretion and is inapplicable in this case.

The failure to enforce exception to the public duty doctrine recognizes that some statutes impose on government a duty owed to a particular class or category of individuals, such that the failure to enforce those statutes breaches a duty that can sustain an action in tort. To prove the failure to enforce exception, a plaintiff must show that: (1) Governmental agents responsible for enforcing statutory requirements possess actual knowledge of a statutory violation; (2) fail to take corrective action despite a statutory duty to do so; and (3) the plaintiff is within the class the statute intended to protect. *Bailey v. Town of Forks*, 108 Wn.2d 262, 268, 737 P.2d 1257 (1987).

Ehrhart claims King County violated WAC 246-101-505 because it failed to determine "appropriate" action in response to a December 2016 hantavirus report and therefore knew of its own violation. This argument fails for three reasons.

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First, Ehrhart does not establish—or even argue—that King County is responsible for enforcing particular statutory requirements. Nothing in the duties listed in WAC 246-101-505 requires local health departments to enforce anything against anyone; rather the WAC simply outlines the departments' own responsibilities. Ehrhart's argument seems to be that King County is responsible for enforcing against itself a regulation promulgated by a state agency. But a requirement to comply with regulations is different from a requirement to enforce those regulations. *See Woods View II, LLC v. Kitsap County*, 188 Wn. App. 1, 27, 352 P.3d 807 (2015).

Second, Ehrhart does not establish that King County had actual knowledge of a violation. Ehrhart claims that King County had an obligation to address the December 2016 report of hantavirus by determining *appropriate* action and that it took *inappropriate* action. Ehrhart argues King County's inappropriate action simultaneously (1) violated the WAC and (2) gave King County actual knowledge of that violation. But whether appropriate action was taken cannot establish that King County had actual knowledge of an alleged violation. According to Ehrhart and the trial court's reasoning, if the jury finds that King County's actions in response to the December 2016 report of hantavirus were not appropriate, then King County would have been on notice that it was violating WAC 246-101-505, *even while King County thought it was complying with the WAC*. This conundrum come from mistakenly applying a "failure to enforce" lens to a situation that does not involve a county enforcing a statute against a third party it knows to be violating the law. Viewing all facts and inferences in favor of King County—as we must—reasonable minds can conclude only that King County did not know about a statutory violation and therefore owed no duty to Brian.

Finally, Ehrhart does not establish that King County's actions violated WAC 246-101-505. Ehrhart relies on two Court of Appeals cases (*Livingston v. City of Everett*, 50 Wn. App. 655, 751 P.2d 1199 (1988); *Gorman v. Pierce County*, 176 Wn. App. 63, 307 P.3d 795 (2013)) to argue a statutory violation exists for purposes of the failure to enforce exception when "there is a known hazard as well as a governmental obligation to address it" and the government fails to address the hazard. But neither case involved a statutory violation by the government. Instead, the governments' duty to act arose because private citizens violated ordinances relating to dangerous dogs. In both cases, the government officials had to determine what action would be appropriate in response to those statutory violations by third parties. The defendants in *Livingston* and *Gorman* could be held liable because they failed to make the determination required by law. But here, King County in fact made a determination about how to respond to the December 2016 report of a hantavirus case; Ehrhart simply disagrees its determination was appropriate. As in *Livingston* and *Gorman*, the governmental duty was to make a determination, not to make a *particular* determination. Because King County made a determination as required by regulation, *Livingston* and *Gorman* do not support Ehrhart's argument that King County violated WAC 246-101-505.

Ehrhart has not shown that King County (1) is responsible for enforcing WAC 246-101-505 against itself; (2) violated WAC 246-101-505; or (3) had actual knowledge of an alleged violation. Ehrhart has therefore failed to satisfy the first element of the failure to enforce exception to the public duty doctrine.

Ehrhart's argument under the second element is that the same action that allegedly violated WAC 246-101-505 also constituted King's County failure to take corrective action. But the second element of the failure to enforce exception asks whether King County "fail[ed] to take corrective action despite a statutory duty to do so," not whether King County had notice of its own alleged failure to follow the WAC. And, as noted above, a requirement to follow a WAC is distinct from a requirement to enforce that WAC against third parties.

Because the crux of the public duty doctrine is whether government owes a duty to the plaintiff in particular or to the public as a whole, the third element of the failure to enforce exception is perhaps most important. The trial court was right to examine WAC 246-101-005, which explains the purpose of reporting notifiable conditions, to determine whether Brian is within the class of individuals WAC 246-101-505 is meant to protect. But we disagree with the trial court's conclusion. The plain language of WAC 246-101-005 makes clear that the class of people meant to be protected by WAC 246-101-505 is the public as a whole. Because WAC 246-101-505 creates only a general obligation to the public and not a duty to any particular individuals, Ehrhart cannot meet the third element for the failure to enforce exception as a matter of law.

Because no enumerated exception to the public duty doctrine applies and Ehrhart has not established any other duty King County owed to Brian as an individual, the public duty doctrine bars Ehrhart's claims against King County. We hold the trial court must grant King County's motion for summary judgment on remand.

In addition to misapplying the failure to enforce exception, the trial court's ruling was procedurally improper. Summary judgment is appropriate only when there are no genuine issues of material fact. CR 56(c). Granting summary judgment on the condition that a jury find a particular material fact—as the trial court did here—is incompatible with the very nature of summary

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judgment. The trial court could have appropriately granted summary judgment only on those elements it believed were resolvable purely as a matter of law. Or it could have denied summary judgment altogether. But its conditional grant was not an option under CR 56. Accordingly, we vacate the trial court's conditional partial grant of summary judgment.

Loyal Pig, LLC v. Dep't of Ecology, Division III COA Published Op. (2020), 2020 WL 2122891

By Bill Pardee

Loyal Pig, LLC holds a water right certificate granted in 1970 to apply water to Franklin County farmland. The law limits a water right to an amount of use per year, a rate of flow, a point of diversion, and a location of application. The water right holder may apply for a change in the site of diversion, the place of application, or both.

In 2014 Loyal Pig's predecessor applied to the Benton County Water Conservancy Board (Benton County Board) for a change in the location of the diversion and the site of application of a portion of the water right. When reviewing the 2014 change application, the Benton County Board calculated the annual consumptive quantity (ACQ) of water on the Franklin County farmland. The calculation would limit the amount of water that Loyal Pig could apply on the new location of application. The law calculates the ACQ by averaging the most recent five-year period of continuous beneficial water consumption used by the irrigator. The Benton County Board calculated the ACQ with average water use from 2009 to 2013, the five most recent years before the 2014 application for change. The Department of Ecology reviewed the Benton County Board's decision, as required by law, and approved the change in the water right certificate. Because of a lower use of water, during 2009 to 2013, the change limited the amount of the water right from its original amount in 1970.

In January 2017 Loyal Pig submitted another application with the Franklin County Water Conservancy Board (Franklin County Board) for an additional change in diversion location and place of application for the water right. In May 2017, the Franklin County Board issued its decision approving the January application. In doing so, the board adopted the 2014 ACQ amount rather than calculating a new amount based on the years 2012 to 2016. The Franklin County Board reasoned that it need not perform a new calculation since Loyal Pig filed the 2017 application within five years of the 2014 calculation. The Department of Ecology is unable to perform the calculation because Loyal Pig refuses to provide the records needed.

The Department of Ecology reversed the Franklin County Water Conservancy Board's decision because the Franklin County Board failed to perform a new annual ACQ calculation for years 2012 to 2016. Loyal Pig, together with the Columbia Snake River Irrigators Association, an association of Mid-Columbia irrigating growers, appealed, to the Washington State Pollution Control Hearings Board (PCHB), Ecology's reversal of the Franklin County Board's approval of the 2017 change application. The challengers are collectively referred to as Loyal Pig.

Before the PCHB, Loyal Pig argued that the Department of Ecology should have utilized the ACQ from the 2014 change application for the 2017 application for the following reasons: (1) the principle of res judicata precluded a new calculation; (2) a governing statute affords a five-year grace period for loss of water rights, and Ecology should apply this grace period when a water right holder applies for a second change in use within five years of the first application; (3) an Ecology policy, POL 1120, simplified the determination for an application change, and requiring a new calculation of the ACQ for each change would thwart this policy; and (4) irrigators in the Columbia Basin have relied on Ecology's application of the grace period when a water right holder applied for a second change within five years of a previous calculation of the ACQ.

Before the PCHB, the Department Ecology argued that RCW 90.03.380 requires a full formal ACQ calculation from the most recent five-year period no matter if the applicant for a change obtained a change approval within the last five years. For the 2017 change application, according to Ecology's interpretation of the statute, the ACQ would comprise water usage during 2014-2016 in addition to the previously calculated amounts for 2012 and 2013.

Both Loyal Pig and the Department of Ecology filed cross-motions for summary judgment before the PCHB. One of Loyal Pig's declarations attached a legal memorandum from an attorney. The attorney observed that under Ecology POL 1120, Ecology may conduct a simplified tentative determination that would not require an ACQ analysis when an application is submitted within five years of a previously approved application. The Department of Ecology submitted a declaration of an employee that determined an ACQ analysis would be required for the 2017 application because the proposed change would add other irrigated acres to the water right. The employee further concluded that Ecology needed to review irrigation records for years 2014 to 2016. The PCHB

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granted the Department of Ecology's motion for summary judgment.

Loyal Pig appealed to the Benton County Superior Court. Before the superior court, Loyal Pig moved for summary judgment on three grounds: (1) Loyal Pig argued that language in chapter 90.14 RCW provided a five-year grace period, during which the Legislature intended to protect a water user from relinquishment of his or her water right; (2) Loyal Pig contended that a conservancy board should be permitted to rely on its prior decisions under the doctrine of administrative res judicata; and (3) Loyal Pig maintained that Ecology violated the Administrative Procedure Act, chapter 34.05 RCW, when it insisted on calculating a new ACQ for the 2017 change application, because this insistence effectively adopted a regulation without following the administrative rulemaking process. One of Loyal Pig's declarations noted that a grower who rotates crops on its land will fluctuate from year to year in the amount of water used. Another declaration avowed that the Department of Ecology informally adopted a new agency order, directive, or regulation of general applicability that refused to implement a longstanding five-year grace period against relinquishment of water right, highlighting Ecology's POL 1120 promotion of a simplified procedure when forfeiture of water is not an issue. The declaration also observed that, as early as 2009, Ecology moved away from this well-established procedure, taking the position that no grace period existed. The Department of Ecology cross moved for summary judgment on Loyal Pig's claim of abuse of rulemaking authority. One declaration Ecology submitted of an employee stated that he had extensive experience with POL 1120, and stated he would not interpret this policy to bar review of ACQ if it was performed within five years of a previous ACQ analysis. Rather, another Ecology policy, POL 1210, did not bar a new ACQ analysis with a second application. POL 1210 outlines the procedures that the Department of Ecology employs when reviewing water right change applications pursuant to RCW 90.03.380(1) that seek to irrigate additional acreage. Unlike POL 1120, POL 1210 does not mention a simplified tentative policy.

The superior court reversed the PCHB and ruled that the Department of Ecology may not require a new ACQ calculation when a water right holder applies for a second change in the water right within a five-year window. The superior court also ruled that Ecology abused its rulemaking authority. The court issued a permanent injunction that bars Ecology from requiring sequential ACQ calculations unless Ecology engages in the formal rulemaking process.

This appeal raises the principal question of whether, under RCW 90.03.380, the Department of Ecology may insist that a water right holder calculate anew its ACQ when Ecology, within the past five years, already calculated the holder's ACQ because of an earlier application for change.

RCW 90.03.380(1) governs our decision. The Department of Ecology argues that the explicit language of that statute requires it to review the "most recent five year period" of water use to determine ACQ before approving a water right owner's application to change or transfer a water right, regardless of any earlier approved application. Loyal Pig contends that the more appropriate interpretation of the statute above would allow the water right owner, once Ecology approves a water change application, to seek a further change within the "five year grace period" following the approval of its application and, during this five-year grace period, no subsequent calculation of water use should be required when the user's farming practices have not been changed. According to this contention, when Loyal Pig submitted its application for a change in water use in 2017, the 2014 adjudication of the ACQ bound Ecology.

We agree with the Department of Ecology that RCW 90.03.380(1) shows legislative intent to require a new ACQ calculation with every application for a change in the water right certificate. The statute demands a review of the last five years of water consumption. The statute admits no exception when the applicant applied for a change in the water right during the last five years.

Loyal Pig fears the Department of Ecology's interpretation of RCW 90.03.380 exposes growers to a partial relinquishment of a water right. Loyal Pig relatedly argues that Ecology's interpretation of RCW 90.03.380 conflicts with the spirit behind RCW 90.14.140, which shuns penalizing a water user for nonuse of water for sufficient reasons. To understand the fear, we provide some background to Washington water law.

Washington's water law follows the western American doctrine of water rights by appropriation. Under the appropriation system, the water right holder must put the water claimed under the right to beneficial use or it relinquishes the right. RCW 90.14.160. Washington law demands that a water right to return to the state, under relinquishment statutes, to the extent that, without cause, the water right holder voluntarily fails to beneficially use all or any portion of the water right for a period of five successive years. RCW 90.14.130-.180. As well as being critical to establishing the existence of a water right, beneficial use establishes the quantity of that right. *Crown West Realty, LLC v. Pollution Control Hearings Bd.*, 7 Wn. App. 2d 710, 733, 435 P.3d 288 (2019). A user acquires the right only to the quantity of water actually put to use with reasonable diligence. *Cornelius v. Dep't of Ecology*, 182 Wn.2d 574, 586, 344 P.3d 199 (2015).

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Loyal Pig sought changes in application of its water rights in both 2014 and 2017. Although a water right certificate limits use of the right to a particular source and diversion location and to a discrete area of land, the water right holder may apply to the Department of Ecology to change the location of diversion or the situs of irrigation. RCW 90.03.380(1) authorizes this change or transfer. RCW 90.03.380 impliedly grants Ecology the right to limit the extent of the change to the current ACQ, which could be lower than the initial water right.

When Loyal Pig applied for the change in 2014, the Department of Ecology measured its ACQ and thereafter limited its water right to that quantity. If Ecology measures the ACQ again in 2017, the calculation could arrive at a smaller sum than the 2014 calculation. Use of a new ACQ could further reduce Loyal Pig's water right. Agriculture in major sections of Eastern Washington, particularly the Columbia River basin, lacks the rainfall to raise crops, and the region thrives on irrigation water. Profitable production of most crops east of the Cascade Mountains demands irrigation. Alternating crops grown on the same land helps to preserve the land, but different crops require different sums of irrigation. Frequent changes in transfer diversion points and application sites, even with a five-year window of time, accommodate an efficient use of irrigation water from crop to crop and site to site. Under 90.03.380(1), these frequent changes could penalize irrigators by reducing a water right. The current law also promotes excessive use of irrigation water in order to save water rights. We would welcome a change in the law.

We observe that some statutes mitigate Loyal Pig's and our concern. For example, the Legislature has afforded at least two situations in which the Department of Ecology may ignore the most recent five-year period when a water right holder applies for a change. RCW 90.03.615. We already mentioned RCW 90.14.140, which excuses a reduction in use by the water right holder due to drought, temporary reduction in water need, and the rotation of crops, among other reasons. Since we find meaning from related provisions and the statutory scheme as a whole (*State v. Engel*, 166 Wn.2d 572, 578, 210 P.3d 1007 (2009)), we note that the language of RCW 90.03.615 bolsters our interpretation of RCW 90.03.380(1) in that the former statute also shows an intent to always measure the ACQ based on the most recent five years unless limited exceptions apply.

The Department of Ecology also asks that we reverse the superior court's entry of an order enjoining Ecology's implementation of its interpretation of RCW 90.03.380(1). The superior court deemed Ecology's requirement of a new calculation for an ACQ within a five-year window to constitute an adoption of a rule, such that Ecology needed to comply with rulemaking procedures. Ecology argues that an interpretation of an unambiguous statute by an administrative agency does not qualify as a rule. RCW 34.05.010(16), and the definition of "rule," controls the issue. Loyal Pig argues that the Department of Ecology's new interpretation of RCW 90.03.380(1) and its abandonment of earlier practice under one of its policy statements established a new qualification or requirement relating to the ability to transfer water rights, a benefit or privilege conferred by law.

If any agency action meets the definition of a rule, it must follow rulemaking procedures. *Failor's Pharmacy v. Dep't of Social & Health Svcs.*, 125 Wn.2d 488, 493, 886 P.2d 147 (1994). RCW 34.05.570(2)(c) invalidates any rule adopted without the process. Assuming any shift in Ecology's policy or interpretation of the statute, the law demanded that shift because of the unambiguous nature of the statute. Just as this court must enforce a statute adopted by the legislature even against the court's wishes, an administrative agency must also enforce a statute. An administrative agency's practice does not qualify as a rule, for purposes of the Administrative Procedure Act, when the practice does not create a new standard, formula, or requirement, but simply applies and interprets a statute. *Budget Rent A Car Corp. v. Dep't of Licensing*, 144 Wn.2d 889, 896, 31 P.3d 1174 (2001). An agency does not engage in rulemaking when following an explicit statute. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 19, 43 P.3d 4 (2002). Even if an agency announces a new statutory interpretation, the agency may do so through adjudication, and may give retroactive effect to the interpretation in the case in which the new interpretation is announced without rulemaking, because the agency is not really effecting a change in the law. *Andrews v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, 991 A.2d 763, 771 (D.C. 2010). We deem *Campbell & Gwinn* controlling. Because Ecology merely interpreted a clear statute, it did not engage in rulemaking.

Loyal Pig contends that the Department of Ecology's action mirrors the Department of Ecology's action in *Hillis v. Dep't of Ecology*, 131 Wn.2d 373, 932 P.2d 139 (1997). *Hillis* contains many similarities to Loyal Pig's challenge to Ecology's action except that, in *Hillis*, Ecology did not administer the explicit provisions of a statute. Neither did Ecology change its interpretation of a statute. We reinstate the ruling of the PCHB.

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National Parks Conservation Ass'n v. Dep't of Ecology, ___ Wn. App. 2d ___, 460 P.3d 1107 (2020)

By Bill Pardee

The Department of Ecology (DOE) issued an air permit authorizing BP West Coast Products LLC (BP) to take certain actions at its Washington refinery. The National Parks Conservation Association (NPCA) appealed DOE's issuance of the permit to PCHB.

On July 17, 2018, the Pollution Control Hearings Board (PCHB) issued a final decision in favor of DOE and BP, denying NPCA's challenge to the permit. The same day, the PCHB served the decision on NPCA. Statutes and regulations required NPCA to file its petition for judicial review within 30 days, which was August 16. RCW 34.05.542(2); WAC 371-08-555.

On August 14, NPCA sent its petition via overnight delivery to the Thurston County Superior Court, the PCHB, BP, the Washington State Attorney General, and DOE, thus accomplishing service. RCW 34.05.542(2). NPCA also provided the required filing fee. RCW 34.05.514(1); RCW 36.18.020(2)(c). The clerk's office rejected NPCA's petition because it did not have a cover sheet as required under AR 2. At the time the preceding events occurred, the Thurston County Clerk's Office had a faulty document policy. The policy allowed the clerk's office to reject and return petitions for judicial review that failed to include a cover sheet required by AR 2.

On August 20, NPCA received its rejected petition from the clerk's office. That same day, NPCA resubmitted its petition to the superior court. The clerk's office accepted NPCA's resubmitted petition on August 21. NPCA then filed a motion to verify the timely filing of the petition. DOE and BP filed motions to dismiss, arguing that NPCA filed the petition on August 21, and therefore argued that the superior court did not have appellate jurisdiction under the Administrative Procedure Act (APA) because the petition for judicial review had not been filed in a timely manner.

Following a hearing on the motions, the court agreed with DOE and BP, and ruled that it did not have appellate jurisdiction to hear the case because NPCA did not timely file its petition for judicial review. The decision rested on the clerk rejecting NPCA's petition on August 15 because it did not have an AR 2 cover sheet. NPCA appeals.

NPCA argues that it filed its petition for judicial review within 30 days and that compliance with AR 2 is not a jurisdictional requirement. DOE now agrees with NPCA. BP argues that NPCA's petition was not timely filed. BP contends that AR 2 is "inextricably tied to [RCW 34.05.542]." According to BP, "[a] petition for review must be *accepted* for filing within the statutory window," and if the petition is not accepted, "jurisdiction is not secured under the APA."

The APA grants superior courts limited appellate jurisdiction. RCW 34.05.514(1). Before a court can exercise its appellate jurisdiction, statutory procedural requirements must be satisfied. *Diehl v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 153 Wn.2d 207, 217, 103 P.3d 193 (2004). If they are not, the court must enter an order of dismissal. *Stewart v. Dep't of Emp't Sec.*, 191 Wn.2d 42, 52-53, 419 P.3d 838 (2018). We review questions of a court's jurisdiction de novo. *Conom v. Snohomish County*, 155 Wn.2d 154, 157, 118 P.3d 344 (2005).

To invoke a superior court's appellate jurisdiction, the APA requires that a petitioner comply with certain time limitations set forth in RCW 34.05.542(2). As relevant here, "[a] petition for judicial review of an order shall be filed with the [superior] court … within thirty days after service of the final order." RCW 34.05.542(2). In addition, "proceedings for review under [the APA] shall be instituted by paying the fee required under RCW 36.18.020." RCW 34.05.514(1).

The issue in this case is whether NCPA filed its petition and paid the requested filing fee within 30 days of the PCHB's final decision. We conclude that it did because it complied with the statutory requirements necessary to invoke the superior court's jurisdiction and AR 2 does not impose a jurisdictional requirement.

In *Biomed Comm, Inc. v. Dep't of Health Bd. of Pharmacy*, 146 Wn. App. 929, 932-33, 193 P.3d 1093 (2008), the issue was "whether the superior court lost appellate jurisdiction where a timely petition for review of the agency lacked the signature of an attorney for the corporate appellant." The court determined "that the lack of a signature of an attorney for [the corporation] on the timely petition for review … was not jurisdictional." *Biomed Comm*, 146 Wn. App. at 941. In support of its decision the court looked to the provisions of the APA, namely RCW 34.05.542(2) and 34.05.546. Because the statutory requirements of the APA did not require a signature, the court ruled that compliance with the civil rule did not affect the superior court's jurisdiction under the APA. *Biomed Comm*, 146 Wn. App. at 941-42.

Here, as the court did in *Biomed Comm*, we review the statutory requirements of the APA. The APA does not contain a cover sheet requirement. As in *Biomed Comm*, we do not read into the APA a jurisdictional requirement of a cover sheet "where the legislature has not stated one." NPCA complied with APA's statutory requirements. It submitted its petition to the superior court within 30 days, and its petition included the required filing fee.

BP argues that that the clerk had the authority to reject the petition under the CR 5(e) because it did not have an AR 2 cover sheet. If we adopted BP's reasoning, a jurisdictional requirement could vary from county to county, or even from case to case, depending on the

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discretionary actions or inactions of a county clerk. Under CR 5(e) a "clerk may refuse to accept for filing any paper presented for that purpose because it is not presented in proper form as required by these rules of and local rules or practices." The use of the word "may," when used in a court rule, indicates that the referenced course of action is discretionary rather than mandatory. *In re Dependency of M.P.*, 185 Wn. App. 108, 116 n.3, 340 P.3d 908 (2014). It is axiomatic that a court clerk's discretionary action cannot strip a superior court of jurisdiction. A court either has jurisdiction or it does not.

Here jurisdiction is conferred by complying with the APA. Therefore, we conclude that the filing of a form required by AR 2 does not impose a jurisdictional requirement. In so ruling, we are mindful that we should be careful of relying on form over substance to deny a litigant his or her day in court. We are promoting access to justice with uniformity throughout the state. Because the Legislature has stated the jurisdictional requirements to confer appellate jurisdiction on the superior court for appeals from the PCHB, and NPCA has satisfied those requirements, we reverse.

Cascadia Wildlands v. Dep't of Fish and Wildlife, and Resources Coalition, Inc., Division I COA Unpublished Op. (2020), 2020 WL 1675792

By Bill Pardee

The Department of Fish and Wildlife (DFW) is tasked with both protecting fish in Washington water as well as regulating construction activities occurring in our waterways. RCW 77.04.012; RCW 77.55. The typical method of regulating the latter is via a hydraulic permit application (HPA).

DFW's waterway protection duties include regulation of prospecting and mining, with most mining activities subject to the HPA process. Due to 1997 legislation, small scale prospecting was exempted from the permitting process and DFW waived permits for such operations by describing permissible permit-free operations in the Gold and Fish pamphlet. RCW 77.55.091. In 2014, the implementing regulation was amended to exclude "small motorized equipment" from the HPA requirement by including it in the Gold and Fish pamphlet. Former WAC 220-660-300(1) (2015).

Cascadia Wildlands, an Oregon nonprofit corporation whose members enjoy use of regional wilderness lands and river systems, brought a declaratory judgment action to invalidate the new regulation. Cascadia contended that suction dredging required an HPA. A prospector's organization, Resources Coalition, was permitted to intervene. Both Cascadia and DFW ultimately moved for summary judgment. The court denied Cascadia's motion and granted DFW's, ruling that the agency had the statutory authority to issue the change. Cascadia appealed to this court. The matter was administratively transferred from Division Two to Division One. This court requested and received supplemental briefing on the issue of mootness. A panel then heard oral argument of the case.

At issue is an interpretation of the authority given DFW to regulate small scale prospecting and mining without a permit. RCW 77.55.091(1) provides: "Small scale prospecting and mining shall not require a permit . . . if … conducted in accordance with rules established by the department." In turn, "'Small scale prospecting and mining' means the use of only the following methods: Pans, nonmotorized sluice boxes; concentrators; and minirocker boxes for the discovery and recovery of materials." RCW 77.55.011(21). DFW was directed to clarify which small scale methods required a permit and to use the Gold and Fish pamphlet to minimize the number of specific provisions of a written permit. RCW 77.55.091(3).

Using this authority, in 2014 DFW issued the following regulation, former WAC 220-660-300(1) (2015), which read in part: "The rules in this section apply to using hand-held mineral prospecting tools and small motorized equipment." This language provided the impetus for this case. Cascadia argued that the definition of "small scale prospecting" and RCW 77.55.091(1) prohibited DFW from allowing the use of any motorized equipment in small scale prospecting, whereas DFW believed its authority allowed it to regulate some motorized activity via the Gold and Fish pamphlet.

Subsequently, the regulation was amended and a new regulation adopted to govern motorized equipment. WAC 220-660-300(1) was rewritten to govern only "hand-held mineral prospecting tools and a variety of small mineral prospecting equipment." It now concludes with the following sentences: "Suction dredging is not authorized in this section. See WAC 220-660-305 for suction dredging rules." The definition of "suction dredge" was expanded to include "any motorized or nonmotorized device" that operates as a vacuum. WAC 220-660-030(140) (2020).

A permit is now required to engage in suction dredging. WAC 220-660-305(3) (2020). Now DFW requires an individual permit for any small scale prospecting operation that uses motorized equipment. *Id.* The controversy between Cascadia and DFW is at an end. There is simply no relief that can be granted and no reason to believe this court need address the now-disregarded theory supporting the former regulation. The case is moot. The appeal is dismissed.

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6/30 Webinar **"Strategies for Tackling Difficult Public Records Issues."** 3:00 – 4:00 p.m.; 1.0 L&LP Credit; $25.00 for WSBA Administrative Law Section members ($35/Non-members); Register online at: **www.mywsba.org/PersonifyEbusiness/WEBINAR-Strategies-for-Tackling-Difficult-Public-Records-Issues/MeetingDetail/18067656**

7/28 Webinar **"The Intersection of Administrative Law and Treaty Law: A Retrospective on the *Cougar Den* Case."** 3:00 – 500 p.m.; 2.0 L&LP Credits; $25.00 for WSBA Administrative Law Section members ($35/Non-members); Register online at **mywsba.org/PersonifyEbusiness/CLEStore/CLECalendar/MeetingDetails.aspx?productId=18042542**

CLE Stuff

By Eileen Keiffer

The Administrative Law Section currently has the following CLEs scheduled:

Please join experienced practitioner Ann Marie Soto of Madrona Law Group, PLLC on **June 30** as she discusses **"Strategies for Tackling Difficult Public Records Issues."** She will address: serial requestors, unreasonable delays, payment and copying of records, equal treatment of requestors, adequacy of searches, and more.

The webinar will be from 3 p.m. to 4 p.m. PT on June 30, 2020. Approved for 1.0 L&LP credit. Registration is $35.00 ($25.00 for WSBA Administrative Law Section members). Registration is available online at: www.mywsba.org/PersonifyEbusiness/WEBINAR-Strategies-for-Tackling-Difficult-Public-Records-Issues/MeetingDetail/18067656.

Registration is open for the **July 28** webinar: **"The Intersection of Administrative Law and Treaty Law: A Retrospective on the *Cougar Den* Case."** The CLE will feature a panel of dynamic speakers involved with *Washington State Department of Licensing v. Cougar Den, Inc.* They will discuss their roles in the *Cougar Den* case, and its implications for Treaty Law and Administrative Law. Speakers include: Richard "Kip" Ramsey, owner of the Cougar Den gas station; Lance Pelletier, from the team representing Cougar Den; Marcus Shirzad, with the Yakama Nation Office of Legal Counsel; and Administrative Law Judge Courtney Beebe. The panel will discuss the treaty that was the framework for the case, building the case from the ground up at the administrative hearing, and subsequent appeals, including the ultimate appeal to the Supreme Court of the United States.

The CLE will be held as a webinar from 3 p.m. to 5 p.m. on July 28, 2020. Approved for 2.0 L&LP credits. Registration is $35.00 ($25.00 for WSBA Administrative Law Section members). Registration is available online at: www.mywsba.org/PersonifyEbusiness/CLEStore/CLECalendar/MeetingDetails.aspx?productId=18042542

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