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Administrative Law

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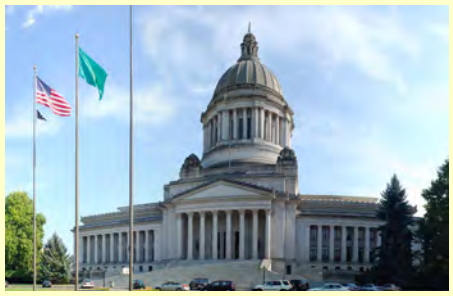

Welcome to the Administrative Law Section's E-Newsletter!

We hope you enjoy our newsletter, and encourage your feedback. Feel free to forward our newsletter to your colleagues, and encourage them to join the Section if they find the newsletter informative! We also welcome your suggestions for topics for future newsletters.

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Inside This Issue

CLE – Advocacy in Administrative Law

The Administrative Law Section is offering another quality CLE presentation designed for those in the trenches involved with administrative law proceedings. All stages of the adjudicative process will be explored, including initial hearing, administrative review, judicial review, and appellate practice. An outstanding cast of presenters will provide advice, practice tips, "gotchas" and hints based on their extensive and varied experience in administrative practice.

The keynote topic, "The Legal Framework for Advocacy," will be presented by **Jeffrey B. Litwak**, counsel for Columbia River Gorge Commission. This opening presentation sets the stage for the day by addressing recent court opinions, governing structures for different forms of government and elements of model APAs and uniform laws.

Thurston County Superior Court Judge Carol Murphy next brings her unique background as an AAG and a judge in the county where most administrative law matters are appealed, to address the judicial perspective on administrative law and appeals to court. Issues involving advocates in state administrative hearings will be highlighted by administrative adjudicators practicing in a variety of jurisdictions: the Department of Licensing, Office of Administrative Hearings, and the Utilities and Transportation Commission, as well as a review judge who has worked with several agencies. The various jurisdictions will be compared and contrasted and the judges will offer their insight on what makes an effective record for their decision-making.

The scope and unique concerns of local government administrative proceedings will be covered by two municipal attorneys, including Ad Law Section incoming Chair **Heidi Wachter**, City Attorney for Lakewood. **Alan Copsey**, Deputy Solicitor General, will speak from his broad experience in handling administrative law matters before courts of appeal and the Supreme Court. A section on ethics will address issues of special interest in administrative proceedings, including the difficult issue of working with unrepresented parties. For rule-making and other matters not involving adjudication, the final session with **Doug Klunder**, Privacy Counsel for the ACLU, will cover effectiveness in representing clients and entities in those matters.

This CLE is approved for **5.5 general credits**, and **.75 ethics credit** for Washington attorneys. For more information or to register, (**click here**).

But wait, there's more! The Administrative Law Section will be hosting a catered reception immediately after the CLE (approx. 4:30 p.m.) See you there! (See notice on pg. 2)

Advocacy in Administrative Law

Date:	Wednesday, October 24, 2012
Time:	8:20 a.m.
Location:	WSBA-CLE Conference Center; 1501 Fourth Avenue, Suite 308, Seattle (also available via simultaneous webcast, broadcast LIVE over the Internet)
Cost:	$225 (AdLaw Section members); $250 (non-members, includes membership)

Notice of Annual Meeting of the Administrative Law Section

We invite all of our current and prospective members to attend our annual meeting on October 24, immediately following the CLE (see above) at approximately 4:30 p.m. The business meeting is a great opportunity for meeting and networking with colleagues in administrative practice. Refreshments will be provided. We look forward to seeing you there!

Message from the Chair

Anthony Broadman

Greetings, Administrative Law Section members. As forecast in the spring edition of this newsletter, the Board of Trustees met this summer to address the fundamental financial changes that WSBA has undergone. Following the WSBA's elimination of the per-member subsidy of sections, the Administrative Law Section's Board of Trustees voted to increase dues by $5, from $20 to $25. This amount reflects, approximately, the loss of the per-member subsidy. In August, the WSBA Budget and Audit Committee approved the dues increase. It will allow the Section to continue to offer CLEs, services like this newsletter, and the Section's public service grants.

I invite all members to attend our annual meeting immediately following the Section CLE on October 24, 2012. The Annual Meeting provides a valuable opportunity to provide input and participate in the business of your Section.

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

Send submissions to: Merrilee Harrell (mharrell@rtwcg.com).

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 nor its officers or agents.

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Help us make this newsletter more relevant to your practice.

If you come across federal or state administrative law cases that interest you and you would like to contribute a summary (approx. 250 – 500 words), please contact Merrilee Harrell: mharrell@rtwcg.com.

Case Summaries – Washington Court of Appeals

***Goldsmith v. DSHS*, 280 P.3d 1173 (July 17, 2012)**

DSHS found that Thomas Goldsmith III (Goldsmith) mentally abused his father, a vulnerable adult. On appeal, Goldsmith argued that the Department lost jurisdiction over this action after his father died and that the Board erred in affirming the Department's abuse finding.

In April 2008, Thomas Goldsmith Sr. ("Thomas Sr.") was 98 years old and suffered from several physical ailments, requiring 24-hour home care. By January 2009, Thomas Sr. suffered mild cognitive impairment and wanted a guardian. The superior court established a full guardianship over his estate. In 2003, Thomas Sr. asked his son (Goldsmith) to help manage his considerable estate. Goldsmith charged $25 per hour plus expenses for the trips he made from his home in Boston to Washington each year. Thomas Sr. paid these fees through Capital Guardianship Services (CGS). In March 2006, Thomas Sr. executed a durable power of attorney naming Leesa Camerota, Executive Director of CGS, as his attorney-in-fact, and granting her power over his assets and liabilities. Thomas Sr. designated Goldsmith as successor attorney-in-fact.

Goldsmith had significant disagreements with CGS over the handling of his parents' finances. As a result, Goldsmith and his father had heated discussions about finances in person and by phone. These fights caused Thomas Sr. to cry, refuse to take his medication, and otherwise become noncompliant with caregiver instructions. The stress would become so great that the caregivers themselves felt threatened. Goldsmith's constant financial pressure on his father led CGS to file a declaration in October 2008 in support of a vulnerable adult protective order. Their declaration described Thomas Sr. as becoming visibly shaken when Goldsmith would not honor his request to stop arguing about financial matters. They further described Goldsmith's actions as intolerable and abusive and stated that his relentless pressuring affected his parents' eating. The resulting protective order eventually led to an agreed visitation order limiting Goldsmith's visits to four hours per week and ordering him to refrain from discussing finances with his parents.

On October 30, 2008, the Department's Adult Protective Services program received an allegation that Goldsmith was mentally abusing his father. After an investigation, the Department notified Goldsmith of a finding of mental abuse of a vulnerable adult. Thomas Sr. died before the administrative hearing was held on this matter. After a hearing, the ALJ concluded that by continually bombarding his father with predictions of financial doom, Goldsmith harassed and verbally assaulted a vulnerable adult. The Board affirmed. On appeal, Goldsmith argued that the Department lost jurisdiction of the action when his father died, contending that the subject matter of the case was his father's protection and that when his father died, the action ceased to exist. Goldsmith argued that once an action is brought on behalf of a vulnerable adult, RCW 74.34.210 transfers a damages claim to a personal representative after the vulnerable adult's death, but any remaining claims cease to exist. A claim for damages is the **only** action that survives the death of a vulnerable adult under the Abuse of Vulnerable Adults Act. The Department responded that this argument ignored other provisions of the Act and that RCW 74.34.200 and .210 were irrelevant because this case concerned an investigation authorized by other provisions of the Act. The Department must investigate reports of abuse and notify the alleged perpetrator of the investigation's outcome. The alleged perpetrator may challenge a finding of abuse by seeking an administrative hearing, as Goldsmith did. Either the Department or the alleged perpetrator may appeal the administrative law judge's ruling. The Board's decision is the Department's final decision. Goldsmith argued that the final order was invalid because (1) it was outside the Department's authority; (2) the Department engaged in unlawful procedure or decision making; (3) the Department erroneously interpreted or applied the law; (4) substantial evidence did not support the final order; and (5) the final order was arbitrary and capricious. Goldsmith did not challenge the Board's conclusion that his father was a vulnerable adult, but he did dispute the conclusion that he mentally abused his father.

RCW 74.34.020(2) defines "abuse" as "the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult" and includes mental abuse. Goldsmith argued that the Department failed to prove he acted willfully or inflicted injury. The Department responded that there was substantial evidence of both willfulness and injury, such as Goldsmith's yelling at his father. A reasonable person would know that lengthy and repeated yelling matches with a 98-year-old in declining health amounted to mental abuse that could cause harm or injury. Although Goldsmith attempted to justify his actions by asserting that he had an obligation as his father's

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Case Summaries – Washington Court of Appeals *continued*

financial advisor to warn him about the precarious state of his finances, the court held that regardless of his motives, Goldsmith's conduct was improper, and the Board did not err in concluding it constituted mental abuse.

Melanie deLeon

***Yakima County v. Eastern WA Growth Management Hearings Board et al.*, 279 P.3d 434 (June 14, 2012)**

The Confederated Tribes and Bands of the Yakama Nation and Futurewise alleged that Yakima County violated certain riparian requirements of the Growth Management Act (GMA). Under the GMA, local governments are required to enact development regulations protecting "critical areas," including fish and wildlife habitat conservation areas, wetlands, frequently flooded areas, critical aquifer recharge areas, and geologically hazardous areas. Local governments must include the "best available science" to create their development regulations, typically in the form of critical areas ordinances. After ordering a review of the best available science, Yakima County enacted a new critical areas ordinance. The Growth Management Hearings Board (GMHB) reviewed the ordinance after receiving numerous petitions challenging it. The GMHB concluded, in relevant part, that (1) the county's decision not to include ephemeral streams in the critical areas ordinance was a violation of the GMA, (2) the county's stream buffers were not supported by the best available science, (3) the wetlands buffers were within the best range of available science, and (4) the allowed minimum adjustments to the stream and wetland buffers failed to comply with the GMA.

The county and the Yakima County Farm Bureau petitioned for review. The superior court reversed the GMHB's order that the county must designate ephemeral streams as critical areas, and found that the stream buffer widths were within the range of the best available science or were reasonably justified outside that range. Futurewise and Yakama appealed. The court of appeals affirmed the superior court's order regarding ephemeral streams, finding that although the county may have departed from the best available science when it concluded that ephemeral streams are not critical areas, "(t)his decision, choosing among multiple planning choices for protecting the functions and values of ephemeral streams, was the result of a reasoned process." The court thus deferred to the county's decision, noting that the county found that ephemeral streams "may be regulated as other critical areas or other regulations." The court of appeals reversed the superior court's conclusion that the county's stream buffer widths were adequate, finding that "substantial evidence supports the GMHB's conclusion that the standard stream buffers and the administrative minimum adjustments of the stream and wetland buffers violate the GMA because they are not supported by the best available science and that the county failed to present a reasoned justification for departure from the best available science."

Gabriel Verdugo

***Ferguson v. City of Dayton*, 277 P.3d 705 (June 5, 2012)**

At issue was a determination of what action constituted the final "land use decision" to determine whether a land use petition was timely filed. The City of Dayton ("Dayton") issued a building permit on August 14, 2009 to Thomas Goddard allowing him to build a "pole" building on his property. This building was five feet from the property line of his neighbor, Laurie Ferguson, and only eight feet from her house. Dayton's planner advised Mr. Goddard that the roof could not be more than 10 feet high because of its proximity to the property line. On September 2, 2009, Dayton changed its interpretation of the building height. The city planner advised Mr. Goddard that the building height was to be measured from the finished grade to the top of the wall plate line (the top of the wall where the roof system attaches.) Ms. Ferguson requested that the Dayton city council stop the project and review the planner's interpretation. Dayton's mayor referred the matter to the city's planning committee who found that the permit was valid.

Ms. Ferguson filed a Land Use Petition Act (LUPA) petition on October 27, 2009, challenging the new interpretation of the height requirement under the Dayton Municipal Code, which limits buildings within 10 feet of the property line to a height of 10 feet and defines "building or structure height" as "the vertical distance measured from the mean elevation of the finished grade around the building to the highest point of the structure or building roof." Dayton moved to dismiss the petition on the basis that Ms. Ferguson had exhausted her administrative remedies by appealing to the Board of Adjustment. But Dayton subsequently realized that there was no Board of Adjustment and admitted that the planning committee that had considered Ms. Ferguson's initial challenge was not the planning committee that was assigned the task of hearing appeals of administrative land use decisions. Ms. Ferguson filed an amended LUPA petition and the parties agreed to stay superior court proceedings while the matter was remanded to the Planning Commission for review. The Planning Commission conducted a public hearing on June 21, 2010 and confirmed the planner's interpretation of the building height after finding the code provision ambiguous. Ms. Ferguson filed a second amended LUPA petition on August 9, 2010. Dayton moved to dismiss arguing that the permit was the final land use decision that triggered a 21-day appeal period. The trial court ruled that the August 14, 2009 building permit was the final land use decision and dismissed the action for lack of jurisdiction due to the untimely filing of the LUPA petition. Ferguson appealed.

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Case Summaries – Washington Court of Appeals *continued*

LUPA was enacted to promote timely judicial review of land use decisions, and requires that a challenge be filed in superior court within 21 days of the "land use decision." RCW 36.70C.040(3). One of the requirements for standing to bring a LUPA action is that the "petitioner has exhausted his or her administrative remedies to the extent required by law." *Asche v. Bloomquist*, 133 P.3d 475 (2006). Dayton had convinced the superior court that under *Asche,* Ms. Ferguson's action was untimely because it was brought more than 21 days after the city issued the building permit in August 2009. But unlike *Asche*, Dayton provided for administrative review of the building permit. The court found this distinction critical because under LUPA Ms. Ferguson lacked standing to initiate court proceedings until the administrative appeal process existing in Dayton had run its course. LUPA defines a "land use decision" in terms of the "determination" by the reviewing entity that has the ultimate authority. RCW 36.70C.020(2). The court held that there was no "land use decision" prior to the final determination by the Planning Commission, which was the entity with the last word on the permit.

Melanie deLeon

***Department of Ecology v. City of Spokane Valley and Coyote Rock, LLC.*, 275 P.3d 367 (May 3, 2012)**

This case was decided under the provisions of the Shoreline Management Act ("SMA") (ch. 90.58 RCW). The primary issue was whether the developer of 30 residential waterfront lots in Spokane Valley could rely on an exemption to the definition of "substantial development" that applies to docks (RCW 90.58.030(3)(e)(vii)). The developer proposed to build a subdivision of 30 homes adjacent to the Spokane River in Spokane Falls. During the approval process, the Department of Ecology endorsed a setback of 75 feet from the water's edge as a buffer that must be "absolutely undisturbed and undeveloped." But the developer wanted to build up to 30 docks, and argued that the dock exception to the definition of "substantial development" applied. The developer argued that it was entitled to stand in the position of the buyers of the lots in order to build the docks; alternatively, the developer argued that it was entitled to rely on the exemption and build the docks in its own right as the owner of the lots.

When the developer applied for the permits and approvals to build a dock at Lot 23, the City of Spokane Falls issued a letter of exemption excusing the developer from the requirement to obtain a substantial development permit because the developer was the current owner of the single family residence associated with the proposed dock. Several months later, the developer applied for the permits and approvals to build a dock at Lot 9. Ecology replied this time, contending that a spec dock is not designed "for the private noncommercial use of the owner, lessee, or contract purchaser" of a single or multiple family residence within the meaning of the dock exemption.

Ecology appealed the letter of exemption for Lot 23 under the Land Use Petition Act (LUPA). When Spokane Falls issued a second letter of exemption for Lot 9, Ecology also appealed that letter. The two cases were consolidated. The superior court judge affirmed the city's issuance of the exemptions. Ecology appealed.

The court examined the legislative findings enacted as part of the SMA, which states that "shorelines of the state are among the most valuable and fragile of its natural resources," and "unrestricted construction on privately owned or publicly owned shorelines of the state is not in the public interest." The court pointed out that "substantial development" is "any development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state." RCW 90.58.030(e), and noted that "exemptions from the substantial development permit process are construed narrowly. Only developments that meet the precise terms of a listed exemption may be granted exemption." The court then noted three of the statutory requirements found in the exemption: "(1) it is an exemption for construction of the dock; (2) the construction must be for '*the* … use' of '*the* owner, lessee, or contract purchaser of single and multiple family residences'; and (3) it must be for such owner's lessee's, or contract purchaser's private 'noncommercial' use." (Emphasis in original). The court concluded that the legislature's use of the article "the" before "owner, lessee, or contract purchaser" means that the court will construe the exemption to apply only where the owner, lessee, or contract purchaser who is requesting permission to construct the dock will be its private noncommercial user.

The court rejected the developer's argument that it could seek the exemption in its own right as the owner of the property, citing to the status of the homes as "speculative" homes built on speculation that the builder could sell the homes to buyers. As such, the developer did not come within the exemption language "for a private noncommercial use" because the developer was clearly engaged in a commercial use. The court held that the statutory exemption applied "only when the owner, lessee, or contract purchaser requests the permit in order to undertake construction for its own noncommercial use."

John Gray

Public Service Grant Project

Each year, the Administrative Law Section donates to at least one public service project. Information on how to apply can be found at the (**Section's website**).

Case Summaries – Federal

Two U.S. Supreme Court Cases Involving "Surprise" of Agency Interpretations

The U.S. Supreme Court decided two cases just a few days apart, rejecting an agency's action because the action was a "surprise" to the regulated entities. In *Christopher v. Smithkline Beecham, Corp.*, 567 U.S. ___ (2012), the Court concluded that a Department of Labor (DOL) interpretation of its own regulation was not entitled to deference under *Auer* v. *Robbins*, 519 U. S. 452 (1997) (also called "*Seminole Rock*" deference), which specifies that the court gives deferential consideration to an agency's interpretation of its own regulation, even when the agency provides that interpretation in an amicus brief. In this case, DOL provided the Supreme Court an interpretation that was the opposite of the position it took in amicus briefs in similar actions. In rejecting deference, the Supreme Court reviewed numerous situations in which deference is inappropriate, including: when the agency's interpretation is plainly erroneous or inconsistent with the regulation; when there is reason to suspect that the agency's interpretation does not reflect the agency's fair and considered judgment on the matter in question; when the agency's interpretation conflicts with a prior interpretation; when it appears that the interpretation is nothing more than a "convenient litigating position, or is a *post hoc* rationalization. Here, the Court withheld deference noting that the petitioners "invoke the DOL's interpretation of ambiguous regulations to impose potentially massive liability on respondent for conduct that occurred well before that interpretation was announced. To defer to the agency's interpretation in this circumstance would seriously undermine the principle that agencies should provide regulated parties 'fair warning of the conduct (a regulation) prohibits or requires.'"

There is nothing surprising about the court withholding *Auer* deference. It is consistent with other U.S. Supreme Court precedent, including *NLRB v. Bell Aerospace Co.*, 416 U.S. 267 (1974). The Court was understandably skeptical of DOL's interpretation because the DOL had already presented a 180-degree opposite interpretation of the same regulation to a different court in a different pending matter. When an agency interpretation is not entitled to deference under *Auer*, the Court considers whether it has the "power to persuade" under *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944). Here, the Court concluded that the DOL's interpretation was "quite unpersuasive." This case is a good read on federal court deference to agency interpretation of its own regulations. Another good read is Matthew C. Stephenson and Miri Pogoriler, *Seminole Rock's Domain*, 79 Geo. Wash. L. Rev. 1449 (2011).

In the second case, *FCC v. Fox*, 567 U.S. ___ (2012), the Supreme Court rejected administrative penalties issued to Fox Television based on the FCC's interpretation of 18 U.S.C. §1464, which bans the broadcast of "obscene, indecent, or profane language." In *Fox I*, 556 U.S. 502 (2009), the Supreme Court concluded that the FCC enforcement of §1464 to fleeting expletives was permissible. Those fleeting expletives, by Nicole Richie and Cher, occurred during the 2002 Golden Globe Awards. In this 2012 follow-up decision, the Court concluded that the FCC could not issue an administrative penalty to Fox because at the time of the 2002 Golden Globe Awards, the FCC's policy explained that it had consistently cited repetition and persistent focus on sexual or excretory material as factors in determining offensiveness. Together the two *Fox* cases allow an agency to change a policy, but signal that enforcement of a changed policy will most likely be only prospective.

Jeffrey B. Litwak

***Astrue v. Capato*, 132 S. Ct. 2021 (May 21, 2012)**

After her husband's death, Karen Capato conceived twins through in vitro fertilization using her husband's preserved sperm. The Social Security Administration (SSA) denied her application for survivors' benefits for the twins. Ms. Capato sued, arguing that her twins met the plain definition of "child" in 42 U.S.C. § 416(e): "'(C)hild' means … the child or legally adopted child of an (insured) individual.'" Ms. Capato asserted that no further analysis was necessary.

In contrast, SSA contended that the Court should consider the twins' eligibility in light of subsequent provisions, 42 U.S.C. § 416(h)(2) and (h)(3)(C), which the SSA read to mean that biological children are entitled to benefits "only if they qualify for inheritance from the decedent under state intestacy law, or satisfy one of the statutory alternatives to that requirement." The Court agreed with SSA that the entire statutory scheme was more likely intended "to benefit primarily those supported by the deceased wage earner in his or her lifetime." But more importantly, for purposes of administrative law, the Court also concluded that the SSA's was at least a reasonable reading of the statutes, and even if there were more than one reasonable interpretation, SSA's interpretation was entitled to deference under *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 104 S.Ct. 2778 (1984). The Court reiterated that *Chevron* deference is appropriate "'when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority.'" *Id.* at 2033-34. In this case, SSA's interpretation of the relevant statutory definitions had been promulgated in notice-and-comment rulemaking, and Congress had plainly granted SSA the authority to promulgate such rules. The rules were not arbitrary and capricious, nor were they contrary to the plain language of the statute. As a result, the Court had to defer to the agency's regulations.

Rebecca Glasgow

Case Summaries – Other Jurisdictions

Substantial Evidence in Oregon

***Kirsch v. Dep't of Consumer & Bus. Servs.*, 278 P.3d 104 (2012)**

This is one of those rare opinions that so clearly describes, concisely bundles, and plainly applies the substantial evidence standard of review that even seasoned practitioners should take note. Washington practitioners might save this opinion as a quick reference to precedent applicable to virtually all cases involving judicial review of questions of fact under the Oregon APA. In this otherwise unremarkable case, Kirsch challenged an individual health insurance premium rate increase, arguing that there was no substantial evidence in the record that the agency complied with the statutory requirements for rate increases. The court of appeals first provided the basic foundation of the substantial evidence standard, that an agency's "findings of fact (must) be supported by substantial evidence and that its conclusions (must) be supported by substantial reason, *i.e.,* its conclusions must reasonably follow from the facts found." The court also noted that "agencies are required to demonstrate in their opinions the reasoning that leads the agency from the facts that it has found to the conclusions that it draws from those facts."

In response to another argument where the petitioner contended that her evidence was more *persuasive* than that offered by the agency, the court noted, "(o)ur duty * * * is not to reweigh the opposing testimony to determine which is more persuasive; it is to decide whether a rational person, viewing the whole record, could reach the same findings as (the agency)." The court also cited authority stating that it "will overturn an agency order only if 'the credible evidence apparently weighs overwhelmingly in favor of one finding' and the board finds the other without providing substantial reason in the order for doing so."

Jeffrey B. Litwak

Practice Tips: Tips for Practicing Before an Administrative Agency

John M. Gray, Administrative Law Judge, pro tem, Office of Administrative Hearings

This short list of five tips for administrative practice is not definitive, but may prove useful to you.

1. Study the Notice Letter or Letter of Administrative Charges (however denominated). This document tells you what the agency proposes to do and why; e.g., benefits are being reduced or eliminated, or a license is being suspended or revoked. It frames the scope of the hearing in which you will be involved. The Notice Letter will also identify the statutes and administrative rules on which the agency relies, useful if you are unseasoned in this kind of hearing. It usually includes a statement of the facts on which the agency has made its decision to take action. By reading it, you will have an idea of what the agency will try to prove at the hearing, you will be able to decide what you need to prove and, at the same time, have a reasonable idea that other issues are beyond the scope of the hearing.

2. Review the Agency's Procedural Rules. Agencies have their own procedural rules. If you are involved in a DSHS hearing don't cite to UTC rules. Check the rules that pertain to the agency involved. If the hearing is to be before an administrative law judge from the Office of Administrative Hearings, be familiar with the OAH rules. If the hearing is to be before an administrative law judge within an agency, the OAH rules do not necessarily control (although in some situations they may be persuasive.)

3. Be Aware of Deadlines. Deadlines are critical in administrative hearings. If you miss the appeal deadline, there is usually no "wiggle room" for arguing for a late-filed appeal; your case may be over before it gets started. Critical deadlines may also apply to lists of proposed exhibits or witnesses. The list of witnesses usually includes all witnesses, both lay and expert. The administrative law judge may exclude exhibits that were not timely identified. The administrative law judge may also not allow witnesses to testify if those witnesses were not identified on the witness list.

4. Don't "Wing It." A practitioner with a busy bench and jury trial schedule may devote time to preparing for court cases, letting administrative cases slide in terms of preparation, hoping to rely on personal experience to get through the administrative hearing. However, in an administrative hearing - just like in court - so much depends on the facts. Knowing what your witnesses plan to say and knowing which documents to offer (and why objections to their admission should be overruled, if necessary), knowing what the opposing party's witnesses will say, requires preparation by the competent lawyer. Prepare for the hearing; don't wing it.

5. Don't Demonize the Other Party. Emotions can run high in a hearing, particularly where someone's livelihood is on the line. Don't let emotions take control of you. Be the professional lawyer that you are and keep things impersonal. The administrative law judge will appreciate the lawyer who presents the facts and the law without theatrics.

Notices

The Office of Administrative Hearings is seeking qualified persons to fill "on call" positions. These Administrative Law Judge pro tem positions can be found at the OAH web site (http://www.oah.wa.gov/careers.shtml).

Homan Award/ Call for Nominations

The Frank Homan Award is given annually to an individual who has demonstrated contribution to the improvement or application of administrative law. The award is named for Frank Homan, a dedicated teacher and mentor who was passionate about improving the law.

Only AdLaw Section members can nominate, but a nominee does not have to be an attorney or a Section member. To make a nomination, send an email to Kristal.wiitala@dshs.wa.gov that includes the following information:

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

The deadline for nominations is July 15, 2013.

Administrative Law Section Chair Anthony Broadman (on right) presents the Homan Award to Gonzaga Law Professor Larry A. Weiser at a reception on June 4, 2012.

Join Our Section!

We encourage you to become an active member of the Administrative Law Section. Benefits include reduced tuition at Section-sponsored CLEs, a subscription to this newsletter, and networking opportunities in the field of administrative law. **Click here to join!**

The Section also has seven committees whose members are responsible for planning CLE programs, publishing this newsletter, tracking legislation of interest to administrative law practitioners, and much more. Feel free to contact the chair of any committee you have an interest in for more information. Committee chairpersons are listed on page 2 of this newsletter, and on the Section's website.