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## Strategies for Writing Administrative Decisions Tips from the Appellate Bench

by Judge Rebecca Glasgow

### Generally

**A**s a **Court of Appeals judge** and a former assistant attorney general, I have learned to wholeheartedly appreciate a well-crafted administrative decision. Based on COVID-era statutes, the Court of Appeals regularly engages in direct review of Administrative Procedure Act and Land Use Petition Act decisions, skipping the unnecessary step of substantive review in superior court. RCW 34.05.518; RCW 36.70C.150. Appellate judges appreciate when an administrative decision is clear, both in its findings of fact and in its legal analysis. Although we recognize that administrative law judges and review judges are writing primarily for the parties in the case, there are often opportunities to also make decisions easy for courts to work with on appellate review.

With that goal in mind, below is a list of tips from a member of the appellate bench:

**Write for a generalist reader:** Although many state court judges were once experts in particular areas of the law, and some of us had expertise in state and local agency law, judges very quickly become generalists. Administrative decisions that we find easiest to navigate are those written with a generalist audience in mind. Although many ALJs and review judges develop deep expertise, it is important to maintain the ability to convey the basis of your decision to non-experts. That means ensuring that every step of your decision is expressly included and no step is omitted because it is obvious to those familiar with your area of the law.

In addition, consider whether it would be helpful to present a basic regulatory background near the beginning of the decision. Doing so allows your reader to approach everything else in the case with that basic understanding in mind. Appellate courts often do this in administrative law cases, sometimes under a heading like "Regulatory Background." See, e.g., *Plum Creek Timber Co. v. Wash. Forest Practices Appeals Board*, 99 Wn. App. 579 (2000). Note that in this example, Judge Appelwick included a section providing the reader with an overview of the regulatory landscape before launching into the facts of the case. There is no reason why you could not copy this strategy in particularly complex cases or in cases where you anticipate the case will likely go up on appeal.

**Understand the standards of review and write to satisfy them:** Again, in particular in cases where you anticipate a case going up on appeal, consider performing one round of editing with the standards of review in RCW 34.05.570(3) in mind. Think about whether you have written your factual findings

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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: Gabriel Verdugo ([gabeverdugo@gmail.com](mailto:gabeverdugo@gmail.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, its officers or agents, or any individual member of the Washington Bar.

**Strategies for Writing Administrative Decisions**

*Continued from page 1*

to show they are supported by substantial evidence. If the agency’s jurisdiction is an issue or might be raised on appeal, have you explained the basis for jurisdiction? Have you carefully considered whether all of the necessary issues have been addressed? This obviously is not an exclusive list, but editing once while paying special attention to the standards of review can help you ensure you are expressly stating all of the findings, analysis, and conclusions necessary to reduce the chances of reversal on appeal.

**Findings of Fact Separately numbered, one finding at a time:** Separately numbered findings that contain one distinct finding per number will help ensure that any challenge to that finding of fact must be precise and limited in scope. Avoiding lengthy or convoluted findings ultimately supports clarity of arguments on appeal.

**Make credibility findings expressly:** Occasionally, we see factual findings that imply a credibility determination, but they fail to make the determination expressly. Perhaps there is a hesitation to tell a witness you have found their testimony not credible. But we cannot give your credibility determinations the deference they are due if you do not make them. Don’t get too carried away, however. Labelling a finding as a credibility determination when it really isn’t will not garner you extra deference. We will treat findings for what they actually are, not what you call them.

Similarly, if you need to resolve a conflict between dueling experts, it helps us if you explain why you choose to give more weight to one expert over another. If one expert is more credible than another, then say so.

**Include citations to the evidence:** We review challenges to factual findings for substantial evidence in the record,

so we find it helpful if your finding includes a reference to the specific evidence you are relying on. For example, you can refer to transcript pages if available, a particular witness’s testimony, or a document in your administrative record in a parenthetical after the finding. A specific reference helps ensure we will not miss or misunderstand what evidence you are relying on.

**Consider including findings relevant to alternative arguments:** We can affirm on any basis that is supported by the record. But we won’t engage in factfinding. If there are alternative arguments, consider including the factual findings necessary to resolve the alternatives to avoid remand if we disagree with your primary analysis.

**If you are relying on demeanor during testimony, say so:** For the same reasons we defer to credibility determinations, we will also defer to your assessment of witness demeanor and the nuances you can observe during testimony. And review judges are supposed to give findings made by ALJs who presided over testimony due regard where the presiding judge observed the witnesses firsthand. As a result, it can be helpful if you say which findings are made based on evaluation of testimony, especially if your decision was influenced by demeanor or something else that reviewing judges and appellate judges cannot see in a cold written record.

**Analysis Primary analysis first, and follow IRAC/IREAC/CREAC:** When there are multiple sub-arguments or tangential arguments, it can be hard to determine how best to structure your analysis. When judges review your reasoning, we appreciate a structure that provides your conclusion and the grounds for it before you get bogged down in various tangential arguments

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## Strategies for Writing Administrative Decisions

*Continued from page 2*

that the parties raise. Engage in your primary analysis first, meaning you should explain the most direct path to your result. This primary analysis should be in IRAC/IREAC/CREAC format. (The E in IREAC/CREAC is for “rule explanation,” meaning the discussion of how the rule has been applied in prior cases.) If necessary, embed mini IRACs within your primary analysis, but only if absolutely necessary to explain the most direct route to your result.

Only once the primary analysis is done should you raise and dismiss tangential or side-show arguments. You can include a subsection, series of paragraphs, or single paragraph at the end that raises and dismisses related arguments that do not drive the analysis. Similarly, you can include an “and another thing” subsection or paragraph that raises and addresses minor or tangential arguments raised by the winning party.

**Don’t leave out any steps even if you think they are obvious:** You are experts, your reasoning matters, and we want to see each step. Like you, we are often overwhelmed with the volume of cases on our dockets, so we are grateful when clear and well-organized writing keeps us nodding along with you, rather than leaving us baffled, puzzled, or confused by inside baseball. It may be helpful to imagine explaining your decision to a reasonably smart high school or college student who is interested and engaged, but unfamiliar with the topic.

**Briefly explain why you are not reaching particular issues:** If you need not reach an issue, or if you are deciding not to reach an issue, briefly say why. *See* RCW 34.05.570(3)(f) (allowing a court to grant relief from an agency order if “[t]he agency has not decided all issues requiring resolution by the agency”). If your primary analysis involves a close call, consider whether you want to

go ahead and address any issues that might otherwise be unnecessary, in the spirit of giving us more than one basis to affirm where possible.

**Consider pointing out issues that were not raised before you:** If there is an issue that obviously should have been raised but wasn’t, consider expressly pointing that out somewhere in your decision. This will help the reviewing court by confirming the failure to raise an issue, and it should trigger application of RCW 34.05.554. We will still double-check the record to be sure it wasn’t raised, but we appreciate your clarity about a failure to preserve.

**Review judges should carefully explain any reversal of factual findings made by a presiding ALJ:** Court of Appeals judges recognize the importance of seeing witnesses testify and we are reluctant to reverse a factual finding that relies on testimony. If you are a review judge who is reversing a factfinder who saw the testimony, it’s important to predict our skepticism in this area and take your time to fully explain the basis for your reversal. We need to understand the basis for your different view of the facts. It also helps to support the necessary due regard you have to show the original factfinder.

### Meaningful Introduction

I’ve included this last because I think you should write the introduction last. Unless your agency requires a specific introduction format, I strongly encourage you to include a well-drafted, meaningful

introduction that both previews the crux of the analysis and subtly weaves in any underlying values that are driving your decision.

Think about what the crux factual or legal determination is by thinking about how you would defend your decision if challenged and you could only respond in a few sentences. Assuming someone is going to view your decision with a critical or skeptical eye, what are the one or two things that you want that person to focus on? Alternatively, when explaining your decision to the losing party, what are the one or two things that you want them to understand were the things that drove your decision?

It is also important to recognize the underlying values that often influence our decisions as judges. For example, we don’t like being out on a limb, so it’s an important consideration if the weight of the authority leans in one direction. As another example, judges at all levels pride themselves on ensuring procedural justice, so if there

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Assuming someone is going to view your decision with a critical or skeptical eye, what are the one or two things that you want that person to focus on?

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is a decision based on maintaining procedural fairness, consistency with that core value can be a deciding factor. And for a third example, we respect the role of the various branches of government and we are careful to stay in our lane, so we often point out when we are respecting the role of the other branches. If there is an underlying value like these that influenced your decision, consider subtly weaving it into your introduction, as well as into your analysis.

A well-crafted introduction gives a very basic summary of the facts of the underlying conflict

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## Strategies for Writing Administrative Decisions

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(understanding further facts will be explained later). Think about a first paragraph in a newspaper story, giving the very basic information about how we got here and what the current conflict is. Then give a brief summary of your main conclusion(s) and why you reached it (them). When explaining the outcome, state the crux, and weave in any values that are fundamental to the decision. This type of introduction is helpful for a reviewing or appellate judge because it gives us a preview of the crux of the decision, as well as the things that most strongly influenced you, and it helps us read the rest of the decision with these things in mind.

As appellate judges, we respect and admire the expertise that you develop as administrative law judges and review judges. And we appreciate the care you take in making sure your decisions are thorough and clear. I look forward to reading more of your work in the future! //

## Annual Meeting Update

On October 18, 2025, the Executive Committee had the opportunity to gather in person for their Annual Meeting. Extensive planning for the year was undertaken as well as budget discussions and prioritization of goals for the Section. The committee forecast several mini-CLEs, the continuation of newsletter publications, and the commencement of updates to the publications and practices manual for the upcoming year. The Annual Meeting was successful for business planning for the Section and provided a wonderful opportunity for in-person networking for the executive members. //

## Use of Motions to Prepermit Based on Third Country Agreements

By Alexandra Krakow

In April 2025, the Executive Office for Immigration Review (EOIR) issued Policy Memo 25-28 providing guidance that immigration judges have the authority to prepermit (dismiss without an evidentiary hearing) asylum applications they find legally insufficient. Initially the use of prepermission was used mainly on asylum applications that the immigration judge ruled did not establish prima facie eligibility for asylum.

However, the Department of Homeland Security (DHS) has since expanded their use of motions to prepermit. Under the current Trump administration, the U.S. has entered into Asylum Cooperative Agreements (ACAs) with an increasing number of countries. Under the ACA system when an immigrant is eligible for removal to a country other than their country of citizenship (a “safe third country”), their asylum claim in the U.S. may be barred because they can ostensibly seek asylum in this third country. See INA § 208(a)(2)(A), 8 U.S.C. § 1158(a)(2)(A). The primary third countries to which asylum applicants are being deported are Honduras, Guatemala, Ecuador, and Uganda.

In 2025 DHS attorneys began issuing motions to prepermit asylum applications on the basis that the applicant is eligible for removal to a third country under these ACAs. And then in January 2026, DHS attorneys began filing motions to prepermit under the ACAs before an immigrant had even filed their asylum application.

Beyond the massive due process implications of the government denying asylum claims without a hearing on the merits, and now without the immigrant even filing their asylum application, there are also significant due process issues in the notice given and response times required with motions to prepermit.

In October 2025, the Board of Immigration Appeals ruled in *Matter of C-I-G-M- & L-V-S-G*, 29 I&N Dec. 291, that immigration judges are very limited in their ability to deny a motion to prepermit if the applicant is subject to the terms of an ACA. If an applicant is eligible for removal to a third country, the judge can only deny the motion if the applicant is able to show that it is more likely than not that they will be persecuted for a protected reason in the third country.

In order for the applicant to be able to make this argument, they need to have adequate time to respond to the motion. However, applicants only have 10 days from the date the DHS attorney files the motion for the court to receive a response. If an applicant has an attorney, the attorney will be notified electronically as soon as DHS files the motion and the attorney can file their response electronically. However, if an applicant is unrepresented as the vast majority are, they only receive notice of the motion when they receive it in the mail. Practitioners in Washington state report that applicants are regularly not receiving these motions until five to seven days after the filing date.

The only court in Washington state where these responses can be filed (for those not in detention) is in Seattle, and unrepresented applicants cannot file their responses electronically. Therefore, it is nearly impossible for most to file a timely response when they have mere days to read the motion, potentially seek representation, draft a response, and then get it in the mail with enough time for the court to receive it by the 10-day deadline.

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The Section also has eight 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 or for more information.

(Committee chairs can be found on page 2.)

## Use of Motions to Pretermi Based on Third Country Agreements

*Continued from page 4*

Under the court rules, the judge has no discretion to extend the deadline unless the applicant is able to request an extension prior to the deadline. Unless the applicant happens to have a preliminary hearing in the 10-day window and is able to make a verbal request for an extension, it would then still be nearly impossible for *pro se* applicants to get an extension request to the court in time. When an applicant is unable to file a response or extension request by the deadline, the judge generally must grant the motion to pretermi as it was unopposed.

The end result is an order of removal to a “safe third country” entered for the applicant and makes them vulnerable to apprehension and detention by Immigrant and Customs Enforcement.

This is an issue of vast and growing impact. Unofficial reports show that in April 2025 DHS issued 133 motions to pretermi. In December 2025, that number was over 12,000.

This article serves as a way to raise awareness to the use of these motions and some of the due process issues they raise. //

**There remains an URGENT NEED for pro bono attorneys to help our immigrant community.**

There are volunteer opportunities for attorneys even if you do not have a background in immigration law.

If interested, you may contact Michelle Mentzer at [michelle.mentzer2@gmail.com](mailto:michelle.mentzer2@gmail.com).

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## CASE LAW UPDATE

### In RE: *Petition for Recall of Commissioner Lisa Olsen* (WA Supreme Court, No. 104087-3) (Dec. 4, 2025)

By Eileen Keiffer, Madrona Law Group, PLLC

The Washington Supreme Court ruled on the sufficiency of two recall charges against Pacific County Commissioner Lisa Olsen, relating to alleged violations of the executive session statutory exemption to Washington's Open Public Meetings Act ("OPMA"), Ch. 42.30 RCW. The court found both charges insufficient (both legally and factually).

The recall petition arose out of a controversial issue over management of the county jail in Pacific County. Charge 1 of the recall petition alleged that Commissioner Olsen attended five executive sessions held under RCW 42.30.110(1)(i), without an attorney present. That provision of the OPMA allows a governing body to hold an executive session to discuss litigation or potential litigation with legal counsel—presence of legal counsel is necessary for such executive sessions to be proper. The challenger's evidence was meeting minutes, which were insufficient given that some of the meeting minutes indicated legal counsel was present. As to other executive sessions, Olsen did not dispute attendance without the presence of legal counsel; however, the charge was insufficient because the challenger did not provide evidence the commissioner acted with intent to violate the OPMA, which is required for recall petitions charging an official with violating the OPMA.

Charge 2 alleged that the commissioner allegedly participated in meetings not open to the public. However, the court found this charge factually insufficient because it did not identify the approximate date, location, and nature of the alleged private meetings. The court also found the charge legally insufficient for failure to state which law, standard, or rule for the charge rendered the commissioner's acts unlawful. Instead, the petition stated that the conduct in question was an "implicit violation of the OPMA." The court held this lack of specificity rendered the charge legally insufficient.

The Washington Supreme reversed the decision of the superior court, which would have allowed the recall petition to proceed.

### *Horvath v. DBIA Servs.* (WA Supreme Court, No. 103339-7, Dec. 18, 2025)

By Richard E. Potter

This Public Records Act (PRA) case arrived at the Supreme Court with the only issue being the standard of review that the court of appeals should have applied when reviewing a trial court's decision rejecting a requester's claim he was entitled to certain records: abuse of discretion or de novo. The court quickly ruled that it should have been de novo but also issued a detailed decision on whether DBIA Services, a private nonprofit corporation, was subject to the PRA.

DBIA is a subsidiary of the Downtown Seattle Association (DSA), also a private nonprofit corporation. The City of Seattle hired DBIA as the program manager for the Metropolitan Improvement District, which collects assessments from over 800 property owners, including plaintiff Steven Horvath.

Horvath submitted requests to the City's Office of Economic Development for DBIA records. His requests were referred to the DSA. While making clear she believed that the DSA was not subject to the PRA, the association's director provided some of the requested documents but withheld staff compensation information, which prompted Horvath's suit.

The Supreme Court applied the four-factor test adopted in *Telford v. Thurston County Bd. of Comm'rs*, 95 Wn. App. 149, 162-63, 974 P.2d 886 (1999), to determine whether the PRA applied to DBIA.

The first factor is whether the entity performs "core governmental functions." The court decided that "public safety and sanitation" services provided by DBIA met that portion of the test. The second factor is the amount of government funding received by the entity, which was 93 percent for DBIA. Characterizing the "funding scheme" as not an "ordinary fee-for-services model" the court decided that this portion of the test was met.

The third factor is "government control." Because the city is not involved in the day-to-day operations of DBIA, the court concluded that this portion of the test was not met. The fourth factor is "government creation" of the entity. Because the city did not create DBIA, the court found that this part of the test was not met.

The court in effect added a fifth factor and decided in Horvath's favor because to do otherwise would "frustrate the goal of government transparency," noting that Horvath pays assessments that "fund DBIA's operations and the salaries of its employees."

The majority also seemed to give some weight to the fact that DBIA sometimes refers to itself as "dba Metropolitan Improvement District."

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## Case Law Update

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Justice Madsen's detailed dissent disagrees with the majority on the government function and funding factors, concluding that DBIA has not "effectively assumed the role of government" but merely contracts to provide services in support of economic development and neighborhood organization, at most simply supplementing some city activities.

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### ***Noyola v. Dep't of Corrections*** **(WA Court of Appeals, No. 39698-3-III)** **(June 24, 2025)**

By Natalie Ghayoumi

Mario Noyola, an incarcerated individual at Airway Heights Correction Center, appealed a superior court order dismissing his Public Records Act (PRA) claim against the Washington Department of Corrections (DOC) and enjoining him from making further public records requests. The litigation arose from Noyola's efforts to obtain records concerning electronic JPay messages sent to him by Jesus Salmeron using the account of "David Salmeron." DOC staff had intercepted and rejected several of these messages as sexually explicit under DOC Policy 450.100, which permits staff to screen electronic communications for policy compliance and to issue rejection notices subject to internal appeal.

In November 2020, Noyola submitted a PRA request seeking all records of rejected JPay messages purportedly sent by David Salmeron for a period of time. DOC eventually produced 49 pages of responsive material, consisting of rejection notices, staff screenshots, and appeal documents; however, it did not include the intercepted photos or messages themselves. One photo rejection was later reversed by DOC headquarters, yet the photo was never released to Noyola, the recipient of the email. Noyola filed suit with the superior court alleging PRA violations. DOC counterclaimed under RCW 42.56.565, seeking to enjoin Noyola from further PRA requests, alleging harassment and threats to institutional security.

The superior court did not hear testimony from the parties. It dismissed Noyola's PRA claim, reasoning that Governor Inslee's COVID-19 suspension of RCW 42.56.520 shielded DOC from liability for delayed response and that JPay messages were not "public records" because they did not concern governmental conduct. The court also imposed discovery sanctions on Noyola for refusing to complete a deposition and enjoined him for one year from submitting PRA requests to DOC, finding that he sought records for financial gain, attempted to circumvent DOC mail screening, and posed a security risk.

### 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 email Gabriel Verdugo at [gabeverdugo@gmail.com](mailto:gabeverdugo@gmail.com).

On appeal, Division III of the Washington Court of Appeals affirmed in part and reversed in part. The court upheld the dismissal of the PRA claim, concluding that DOC possessed no records responsive to Noyola's request because the messages were not sent by "David Salmeron" but by Jesus Salmeron using another person's account. The Court of Appeals also affirmed discovery sanctions, relying on *Johnson v. Jones*, 91 Wn. App. 127, 134, 955 P.2d 826 (1998), to hold that a party may not unilaterally limit the scope of a deposition.

The Court of Appeals reversed the injunction. Reviewing de novo under RCW 42.56.565 and *Lyft, Inc. v. City of Seattle*, Wn.2d 769, 796 (2018), the court held that DOC failed to establish by a preponderance of the evidence that Noyola's request constituted harassment or created a safety or security threat. Distinguishing *Department of Corrections v. McKee*, 199 Wn. App. 635, 399 P.3d 1187 (2017), the court defined "harass" as repeated or chronic vexation and found no such pattern here. DOC's assertions that Noyola collaborated with other incarcerated litigants or sought financial gain were deemed speculative. The Court of Appeals also found that Noyola suing and receiving \$5,000 settlement from a school district was insufficient to show improper motive. The Court of Appeals found no direct evidence that disclosure of the rejected messages would threaten institutional security.

Accordingly, the Court of Appeals affirmed dismissal of the PRA claim and the discovery sanctions but reversed and remanded with instructions to vacate the injunction. A concurring opinion emphasized that JPay messages are private electronic communications and not public records under the PRA, even if inspected by DOC staff.

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## Case Law Update

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**Rodriguez v. Walla Walla Police Dep't,**  
**(WA Court of Appeals, No. 40504-4-III)**  
**(Sep. 23, 2025) (unpublished)**

By Sarah Garrod

In *Rodriguez v. Walla Walla Police Department*, the Court of Appeals, Division III, reversed the trial court's summary dismissal of Jose Luis Rodriguez Jr.'s Public Records Act (PRA) lawsuit against the Walla Walla Police Department (WWPD). Rodriguez had requested all police records mentioning or related to him, including incident reports, case reports, interviews, and notes.

The underlying context was a murder investigation in which Rodriguez's name appeared in documentation, although Rodriguez was not the suspected individual. Rodriguez sought full disclosure of the related police file. WWPD provided Rodriguez with certain redacted pages of the investigative report that listed his name, but refused to disclose the remaining pages, claiming they were exempt under the PRA's investigative records exemption (RCW 42.56.240). The trial court agreed and dismissed Rodriguez's complaint.

On appeal, the court first clarified that summary judgment is appropriate only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. It also reiterated that PRA exemptions must be narrowly construed, and that agencies bear the burden of proving that withheld records fall within an exemption.

The court rejected WWPD's argument that the request was limited to pages containing Rodriguez's name, noting that the department initially understood the request to encompass entire investigative reports. The court also held that once an investigation has been referred to a prosecutor, the categorical investigative records exemption no longer applies. Specific records may be withheld only if the agency shows nondisclosure is essential to law enforcement or the protection of privacy. The court agreed with Rodriguez that dismissing a prosecution without prejudice and reopening the investigation, as happened here, does not revive the extinguished categorical investigative records exemption. The court cited *Sargent v. Seattle Police Department*, 179 Wn.2d 376, 386, 314 P.3d 1093 (2013) in support.

The appellate court remanded the case, directing WWPD to provide an exemption log identifying withheld records and reasons supporting nondisclosure. If challenged, the trial court would be required to conduct an in-camera review to assess whether the exemption properly applies. Rodriguez also preserved his entitlement to attorney fees and costs should wrongful withholding be established on remand. //

## NOMINATIONS NOW OPEN FOR THE 2026 FRANK HOMAN AWARD

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 ARE DUE BY JUNE 30, 2026

For nominations, send an email to Lea Dickerson at [lea.dickerson@oah.wa.gov](mailto:lea.dickerson@oah.wa.gov), and include:

- Your name and contact information
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**Frank Homan was a dedicated teacher and mentor passionate about improving the law. His commitment to promoting justice for all and the practice of administrative law is the inspiration for the award that bears his name.**

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