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BEYOND INTERPRETATION: RETHINKING LANGUAGE ACCESS IN ADMINISTRATIVE HEARINGS

A new model for equity: Non-English hearings and the future of due process

by Marek Falk

With your help, Washington can make single-language, non-English administrative proceedings a reality for more Washingtonians.

At Washington's Office of Administrative Hearings ("OAH"), we offer single-language, non-English proceedings in certain cases, when every participant speaks the relevant language. Our work establishes that this is possible. What's more, our results show that this promotes not only language justice for participants, but also time and cost savings for OAH. I am an administrative law judge ("ALJ") who holds hearings in Spanish, and I encourage adjudicative bodies and attorneys representing limited English proficiency ("LEP") clients to work to identify proceedings where this could be possible. We can make this kind of program available to more people, to benefit all involved.

Along with two other ALJs who conduct Spanish hearings, I published an article that you can use to think through the potential opportunities and steps in your field. See Donald N. Dowie, Marek E. Falk & Domingo G. Alvarez, "Improving Language Access and Language Justice: All-Spanish Administrative Hearings in Washington State," 43 *Yale L. & Pol'y Rev.* 656 (2025), yalelawandpolicy.org/improving-language-access-and-language-justice-all-spanish-administrative-hearings-washington-state. A summary of the article's key points appears below.

Our program has grown since the article was published. While one ALJ has moved to another state agency, we have now certified a recently-hired ALJ, as mentioned below, to hold Spanish hearings; she held her first Spanish hearing in August 2025. We also successfully expanded our Spanish hearings program: from 2021 through 2024, we heard Spanish cases only in unemployment insurance appeals (from the Employment Security Department), but in April 2025, we expanded to certain public benefits appeals (from the Department of Social and Health Services). While our program, since its inception, has only held hearings in Spanish, and not in other languages, we have recently certified an ALJ who is fluent in Farsi; opportunities for her to hold hearings in Farsi are being explored.

Additionally, since the program's beginning, as of August 31, 2025, OAH has saved at least 1,445 interpreter hours and completed 583 hearings entirely in Spanish. We hear more cases almost every day.

"[L]itigants who cannot understand or communicate to the court can hardly be said to be on equal footing with those who speak and understand English as their native language."

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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
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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.

Beyond Interpretation

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Personally, as an ALJ holding these hearings, and as a person who cares deeply about both language access and access to justice, the existence of this program and my participation in it bring me deep personal satisfaction. They also give me tremendous pride in my employer. I believe that is true for everyone at OAH who has played a role in making this program possible. It feels good to know you are doing a good thing for the people of your state.

I, along with my colleagues at OAH, hope that other agencies will consider holding single-language proceedings for LEP individuals. It is important to note that the effort to hold single-language, non-English hearings does not need to be led by bilingual attorneys and judges. There is a large role for allies here, who can equally identify the appropriate types of proceedings and equally advocate for this to happen. We wrote our article to show why, in the right context, this solution is better than using interpreter services, and also to provide what is nearly a blueprint you can use to make more single-language proceedings the new reality. The next step is up to you.¹

ARTICLE SUMMARY:

Improving Language Access and Language Justice²

Donald N. Dowie, Marek E. Falk, & Domingo G. Alvarez, "Improving Language Access and Language Justice: All-Spanish Administrative Hearings in Washington State," 43 *Yale L. & Pol'y Rev.* 656, 659 (2025) [hereinafter "Dowie, et al."].

Introduction

OAH, an independent state agency created in 1981, adjudicates appeals from numerous agencies and is statutorily tasked with providing hearings "with the greatest degree of informality consistent with fairness and the nature of the proceeding." RCW 34.12.010.

The authors believe that "litigants who cannot understand or communicate to the court can hardly be said to be on equal footing with those who speak and understand English as their native language." Dowie, et al., *supra* (quoting Kwai Hang Ng, "Beyond Court Interpreters: Exploring the Idea of Designated Spanish-Speaking Courtrooms to Address Language Barriers to Justice in the United States," in *Sociology of Crime, Law and Deviance* 97, 114 (Rebecca L. Sandefur ed., 2009)).

OAH's program to hold hearings entirely in Spanish removes this barrier and places the participants on a more equal footing, advancing not only language access but language justice. *Id.* at 656–57.

The Problems with Interpretation

While interpretation services are essential, they are not without flaws. Interpretation can disrupt testimony, increase hearing length and cost, lead LEP participants to mistrust the system/proceedings, and introduce risks of miscommunication—sometimes with devastating consequences. *Id.* at 666, 669–72. Access to qualified interpreters also varies across the United States. *Id.* at 663–65. Further, for Spanish specifically, the large number of regional variants complicate accuracy, and many Spanish verbs do not translate directly into English, providing increased opportunities for interpreter errors; both problems can lead to incorrect decisions. *Id.* at 665–70.

U.S. examples (though all rare and informal) and foreign examples (some enshrined in law) show single-language proceedings held in a non-official language are feasible in certain contexts. *Id.* at 673–75.

A focus group conducted by OAH revealed that many LEP participants felt uncomfortable with consecutive interpretation, citing interruptions and mistrust

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Beyond Interpretation

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of interpreter accuracy. *Id.* at 676–78. These findings prompted OAH to explore a more radical solution: conducting hearings entirely in Spanish. *Id.* at 678.

Designing the All-Spanish Hearing Project

The pilot program, informed by community input, began with unemployment insurance hearings, which often involve single-party, pro se litigants. *Id.* at 679–80. To ensure due process, OAH developed a rigorous certification process for ALJs, requiring high proficiency in Spanish vocabulary, grammar, and situational comprehension. *Id.* at 680–81. ALJs had to score at least 80 percent in each category to qualify. *Id.* at 681.

Hearings were structured to confirm mutual understanding and preserve the right to request an interpreter at any time. *Id.* at 682–84. Judges disclosed their language background and used standardized scripts to ensure clarity and transparency. *Id.*

The pilot phase included 101 hearings held (234 hearings were scheduled; not all parties appeared or wanted to proceed). *Id.* at 685. Post-hearing surveys showed overwhelming support. *Id.* at 682–84. In 87 post-hearing surveys, 86.25 percent of participants gave “excellent” ratings and 11.5 percent gave “good” ratings, with many participants expressing they had increased trust and satisfaction compared to when using an interpreter. *Id.* at 686–87.

Operational Success and Broader Impact

Following the pilot’s success, OAH institutionalized the program in July 2023. *Id.* at 688. As of March 2025, the agency had scheduled 1,274 all-Spanish hearings and adjudicated 495 cases. *Id.* at 688. The program has yielded multiple benefits:

- Increased participant satisfaction (99 percent of the appellants rated their experience as either “excellent” or “good” in November and December 2023) and reduced appeals compared to interpreter cases;
- Improved quality and coherence of testimony, improving the participants’ access to justice through effective case presentation;
- Elimination of interpreter-related errors;
- Reduced hearing time and cost—hearings averaged 45 minutes versus over an hour with interpreters, and no interpreters needed to be booked and paid for the 1,274 hearing hours scheduled.
- Alleviation of the interpreter shortage;
- Personal satisfaction and professional growth for the ALJs. *Id.* at 688–93.

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Lessons for Other Jurisdictions

Washington's political climate and agency structure were conducive to the program's success. *Id.* at 693. OAH's independence and leadership support—particularly from former Chief ALJ Lorraine Lee—were critical. *Id.* at 693–96. The agency also leveraged in-house bilingual staff for testing, translation, and support, which minimized costs. *Id.* at 696–97.

While some jurisdictions may face legal, logistical, or political barriers, the benefits of single-language proceedings are compelling and can appeal to all government agencies, regardless of political inclination. *Id.* at 693–95. These benefits include significantly reduced costs, enhanced access to justice, and improved participant experience. *Id.*

Conclusion

OAH's all-Spanish hearing program exemplifies an effective approach to language justice. *Id.* at 698. As former Chief ALJ Lee stated, the program "supports OAH's strategic DEI objective of expanding language access[.]" and "promot[es] equitable access for parties in OAH hearings." *Id.* at 698.

Going forward, under OAH's current Chief ALJ RaShelle Davis, an additional ALJ fluent in Spanish has been hired, and Spanish hearings are expanding to more caseloads. *Id.* at 697–98.

For attorneys and agencies, this program can be a model for rethinking procedural fairness and access to justice. *See id.* at 698. "While the agency benefits through the conservation of its resources, the real winners are the parties, who now have better access to justice through an equitable hearing process with fewer barriers." *Id.* //

¹ But, I do welcome inquiries for information or assistance – contact me at marek.falk@oah.wa.gov.

² Two free AI services (Chat-GPT and Copilot) were asked (as an experiment) to summarize the article. Some content from each was retained, but all content, citations, and quotations were verified, rewritten, and corrected.

STATE AGENCIES' INDEXES OF ORDERS AND STATEMENTS – UPDATE

John Gray and Richard Potter

IN NEWSLETTER ARTICLES in 2018, 2019 and 2020¹ we described the requirement in RCW 42.56.070(5) of the Public Records Act (PRA) that each state agency have a publicly available index of final and declaratory orders "that contain an analysis or decision of substantial importance to the agency in carrying out its duties" and of interpretive and policy statements. These indexes must be created "by rule" and include several specific components. We reported on our survey of 12 major state agencies' level of compliance with these requirements. In the third article we highlighted the "significant decisions" online resource of then new Department of Children, Youth and Families, which in our opinion was a good implementation of the PRA requirement for a final orders index.²

Since then we have monitored the Washington State Register for public records rulemakings and have submitted comments and testified at hearings. We have also urged the Attorney General's Office to revise its model records index rule and comment.

The following summary of these efforts is brief. Feel free to contact us if you would like more details. Statements about the level of compliance with the statute are our opinions. So far as we are aware there are no court decisions on these issues.

Rulemaking participation

To date we have participated in rulemaking for several state agencies. In some of these cases the agency had no index rule, and in others it had a rule that ranged from being not at all compliant with the statute's requirements to being partially compliant. The new rules proposed by the agencies in these proceedings ranged from wholly non-compliant to partially compliant.

In our comments to the agencies, we explained the PRA's requirements and urged the adoption of compliant rules and online posting of their indexes. One agency in particular was appreciative of our input, and we developed an index rule template for it, which we have subsequently included in our comments in other agencies' rulemakings. The template covers the PRA-required components: form and content of the index, location and availability to the public, and schedule for revising or updating. "Form and content" includes identifiers for documents, such as topics covered, parties' names, case and decision numbers, and criteria for determining whether an order is "of substantial importance" (i.e., a "significant decision").

The results in these proceedings have been:

- Two agencies decided to not adopt an index rule in the current proceeding and said they would consider addressing the issue in a future proceeding;
- One agency initially adopted a noncompliant rule but in a subsequent proceeding adopted a substantially compliant rule;
- Two agencies adopted substantially compliant rules; One of these said it would address the only non-compliant component in a future rulemaking;
- Three agencies adopted rules that are wholly or substantially non-compliant;

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State Agencies' Indexes of Orders and Statements

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- One agency repealed a partially compliant rule and did not replace it, explaining: “case law only requires that an index if created must be provided to a requestor.” Our research has not found this case law and, so far, the agency has not responded to our request that it identify the case law it has in mind.

As of this writing proceedings are still pending for four agencies.

One PRA-required rule component that we think some agencies do not meet is “the schedule for revising or updating the index,” because the adopted rule says “periodically” rather than a definite time, such as quarterly or annually.

We have been encouraging a continuous review and updating approach: “promptly upon the issuance ...” Agencies may use an order or statement against a party as a precedent “if it has been indexed in an index available to the public” RCW 42.56.070(6); see also RCW 34.05.220(2), (3) in the Administrative Procedure Act. Promptly updating the index with new orders and statements enables agencies to invoke them promptly as binding precedents or standards and keeps the public current as to the agencies’ precedents and policies.

Another way in which an agency’s index rule might not fully implement the PRA’s requirements is if it creates an index of all orders rather than only orders “that contain an analysis or decision of substantial importance to the agency in carrying out its duties.” Such an index might be a simple listing of all orders in a spreadsheet or it could be a searchable database that contains all orders.

Online databases

An all-orders list or database may help fulfill an agency’s obligation under RCW 42.56.070(1) to “make available for public inspection and copying all public records.” Such a list or database is an important public benefit in itself, as well as sparing the agency from having to respond to public records requests for the orders that are available in the online database.

But the requirement under the PRA to create an index of final and declaratory orders “that contain an analysis or decision of substantial importance to the agency in carrying out its duties” offers distinct benefits for the general public, agency employees, and attorneys. We described an attorney benefit in a prior article:

Are you new to practicing before a particular state regulatory agency? Would you like ready access to agency documents that describe key precedents and agency policies? Even if you are not new to practice at a given state agency, would you like to double check your knowledge of precedents and policies against the agency’s listing of them? Indexes required by the Public Records Act are a

potential resource for you – especially the ones that are posted online.³

An agency index of significant decisions is also useful for job applicants looking to become familiar with the work of a possible agency employer.

In our opinion, an online database that just has a simple word search feature is not an “index” within the meaning of RCW 42.56.070. An online resource that has a menu of topics would, we think, be an index within the meaning of that statute. One example of this approach is the Department of Health’s Significant Decisions by Subject Matter Index.⁴

There are other possible online resource approaches that may be compliant with the index requirement. For example, we recommended to one agency that its spreadsheet listing of all final orders (which has columns for date, name or brief title, conclusion, and file name or link) could include a column for “Important issues,” which would be filled in only for orders that “that contain an analysis or decision of substantial importance to the agency in carrying out its duties.”

Attorney General’s Public Records Act Model Rules and Comments

It turned out that not long before we started this project, the Attorney General’s Office (AGO) finished revising its PRA model rules and comments (Chapter 44-14 WAC), so we had missed a chance to provide input to the model records index rule (WAC 44-14-030(2)) and related comment (WAC 44-14-03003).

WAC 44-14-030(2) is not a “model rule” in the sense of a template that a state agency could readily turn into a records index rule with the components required by RCW 42.56.070(5). Rather, it states simply: “Records index. (If agency keeps an index.) An index of public records is available for use by members of the public, including (describe contents). The index may be accessed online at (website address). (If there are multiple indices, describe each and its availability.)”

The WAC 44-14-030(2) comment states: “Agencies could also consider using their records retention schedules as their index ...” An agency’s records retention schedule is not the “index” required by the PRA, because it does not identify individual records and instead just lists types of records.

In early 2020 we met informally with AGO staff and expressed some of our concerns about the model records index rule and the record retention schedule suggestion. This did not result in any changes to the Chapter 44-14 WAC.

To date we have participated in proceedings involving six state agencies that started with proposals to use their record retention schedules as their PRA-required indexes.

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State Agencies' Indexes of Orders and Statements

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We also have participated in proceedings by two state agencies that proposed an index rule that is essentially just the AGO's model rule—in effect “we have a records index of [types of records] available to the public,” without also setting forth the rule components required by the statute.

Early last year, a formal opportunity to advocate for model rule and comment revisions presented itself when the AGO issued WSR 22-21-023, a CR-101 Proposal Statement of Inquiry concerning possible changes to “WAC 44-14-010 through 44-14-040.” This announcement followed a “petition for rule making seeking amendments to the Model Public Records Act rules ... regarding timely and prompt responses by agencies to public records requests,” which had been submitted on behalf of a number of media organizations. Because the inquiry's announced scope also included WAC 44-14-030(2) regarding record indexes, in February of this year we submitted comments and redline revisions to the model rule and the related comment.

Our main points and proposed revisions are:

- The model rule and comment should separately address the requirements for local agencies and state agencies. The law is very different for the two.
- The model rule for state agencies needs more detail in order to be a model in the sense of a template that state agencies can use to create the index rule that the law requires of them. We provide draft language for such a template approach. And our draft comment for state agencies provides specific advice for statutory compliance and best practices.
- The suggestion that state agencies might be able to use their record retention schedules as the statutorily required records indexes should be deleted and replaced with a statement that record retention schedules cannot be used as the PRA-required indexes.

According to the AGO's webpage for this proceeding, nothing has happened for several months. We recently emailed the staff to find out the status and whether they can assure us that the AGO will make and publish a decision on our revisions of the model records index rule and comment. As of the writing of this article, we have not received a response. //

1 See the Fall 2018, Winter/Spring 2019 and Spring 2020 issues at www.wsba.org/legal-community/sections/administrative-law-section.

2 See WAC 110-03-0585 (index of significant decisions) and dcyf.wa.gov/board-of-appeals.

3 WSBA Administrative Law Section Newsletter, Vol. 35 No. 4, p. 3 (Fall 2018)

4 doh.wa.gov/public-health-provider-resources/healthcare-professions-and-facilities/hearings/significant-decisions/significant-decisions-subject-matter-index.

Improving Access to Justice for People with Disabilities in Administrative Hearings Through Representational Accommodation - WAC 10-24-010

By Carla Sullivan - ADA Coordinator for the Office of Administrative Hearings and Laura Bradley - Senior Administrative Law Judge, Office of Administrative Hearings



The Office of Administrative Hearings (OAH) needs your help.

OAH is committed to equity and providing access to justice to all parties who appear in our administrative hearings. To fulfill that goal, we need law students, law clerks, attorneys, and Limited License Legal Technicians (LLTs) who can assist people with disabilities.

What is OAH? OAH is an administrative agency in the executive branch of state government. The mission of OAH is to hear and independently resolve disputes between the public and state agencies with an impartial, quick, and easy-to-access process. OAH decides cases that directly impact our state's most marginalized communities.

How can I help? When a person is denied services or benefits, they can appeal that decision to OAH. OAH provides an administrative hearing conducted by an Administrative Law Judge (ALJ). These proceedings are less formal than traditional courts. For example, the ALJ can explain the hearing process, ask questions of witnesses, and develop a complete record, all while remaining neutral and unbiased. OAH does not require a filing fee. The ALJ decides if the state agency's action was appropriate, and if not, what the remedy should be.

A person with a disability may have difficulty participating in the hearing process. A person with substantial cognitive, physical, or mental disability-related impairments may experience additional challenges when trying to access and understand the administrative hearing process. For example: a person with a developmental disability may have difficulty understanding paperwork. A person with certain types of learning disabilities may not be able to follow steps or organize their thoughts to present their side of the case to the ALJ.

A person with a substantial disability-related impairment may not be able to meaningfully participate in the hearing process or understand the result. In short, they need more help than the ALJ can provide.

OAH created a rule in 2018, WAC 10-24-010, which allows for a suitable representative (or SR) to represent a person with a disability as a necessary accommodation. The

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Improving Access to Justice for People with Disabilities in Administrative Hearings through Representational Accommodation

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purpose of the rule is to make the hearing process accessible by appointing a person who can help a self-represented party with a disability meaningfully participate in the hearing.

OAH is looking for people to serve as suitable representatives (SR) for qualified parties with disabilities under our rule. An SR does not have to be an attorney. We have many opportunities for law students, Rule 6 law clerks, Rule 9 licensed legal interns, and LLLTs to serve as SRs. Examples of tasks an SR can perform to help a person with a disability include helping them gather and organize documents they want the ALJ to see, helping them send or upload relevant information to OAH's case management system, and helping them stay focused during the hearing.

An SR who is not an attorney cannot engage in the unauthorized practice of law. However, there is still much a non-attorney SR can do to assist parties with disabilities.

Rule 6 law clerks can participate in hearings according to the rules outlined in the regulations governing the Washington Law Clerk Program. LLLTs can provide limited services that lie within the scope of the practice LLLTs are licensed to undertake. All these individuals can perform tasks that

do not constitute the practice of law, such as assisting with organizing documents, reading agency documents to the party, and explaining terminology.

OAH provides online training for people interested in serving as an SR for a person with disabilities. If you mentor a Rule 6 law clerk or a Rule 9 legal intern and want to learn how you can provide hands-on legal experience in administrative law for your mentee, we would really like to hear from you.

OAH hearing participants who request an SR engage with state agencies to obtain a variety of social services and benefits including food assistance, Temporary Assistance for Needy Families (TANF), health care, medical transportation, in-home care, child support, and vocational rehabilitation.

Because the OAH hearing process is less formal than traditional courts, most people represent themselves in hearings. Most of our hearings are held via telephone conference call. ALJs are well trained in working with pro se parties. However, even with a more informal process, it can be difficult for people with disabilities to

fully participate in the hearing process and understand the result. Continuances are common when the party is a person with disabilities. Hearings may be continued several times for ADA accommodations, legal assistance, and/or preparation time. People with substantial disabilities who qualify for a suitable representative under the rule are provided a person as an accommodation. This allows a person with a disability to participate in the hearing process and receive a timely decision.

Providing access is required by law. The Americans with Disabilities Act (ADA) and Washington Law Against Discrimination (WLAD) require that people with disabilities be afforded equal access to government services and buildings. This includes the administrative hearing process. For a person with disabilities, receiving a timely decision on basic benefits and services is even more

important when we consider the lack of resources available for people with disabilities and the impact a delayed decision has on a person's physical health, mental wellbeing, and ability to live independently.

You may be asking why OAH does not just hire attorneys to perform

this important service. It would be wonderful if we could do that, but funding for providing suitable representation is not in our budget. For attorneys interested in providing pro bono legal assistance, we would happily accept.

If you are interested in helping parties with disabilities access administrative justice, please contact the ADA Coordinator at OAH for more information.

Thank you for helping OAH provide Washington citizens with disabilities access to justice! //

OAH created a rule in 2018, [WAC 10-24-010](#), which allows for a suitable representative (or SR) to represent a person with a disability as a necessary accommodation. The purpose of the rule is to make the hearing process accessible by appointing a person who can help a self-represented party with a disability meaningfully participate in the hearing.

Carla Sullivan is the ADA Coordinator for the Office of Administrative Hearings and can be reached at OAH_ADACoordinator@oah.wa.gov or 253-476-6882.

[Training materials can be found here.](#)

CASE LAW UPDATE

John Doe P v. Thurston County (WA Supreme Court, No. 102976-4) (June 12, 2025)

*By Eileen Keiffer,
Madrona Law Group, PLLC*

In June, the Washington Supreme Court ruled on a post-dismissal challenge to a trial court's permanent sealing of litigants' true names within court records. The underlying case was brought under the Public Records Act, Ch. 42.56 RCW, (PRA)—in which the petitioners (using pseudonyms) sought to enjoin Thurston County from releasing unredacted sex offender records.

The case is the culmination of extensive litigation, over the course of which most of Does' PRA claims were rejected and relevant records released. Ultimately, the Does moved for voluntary dismissal, but still sought to maintain confidentiality of their identities.

On a preliminary question of mootness, the court first held that the trial court order permanently sealed the Does' identities—thus the public interest in the issue continued.

With respect to the merits, the court held that the trial court committed an abuse of discretion in permanently sealing the Does' true names on two bases.

Originally, the trial court allowed the use of pseudonyms to preserve the Does' ability to seek relief in their PRA injunction action. However, during the course of the litigation, the Does' identities became public, and the Does voluntarily dismissed their PRA injunction action. Therefore, the trial court's findings allowing the Does to use pseudonyms during the pendency of the action were insufficient to justify use of pseudonyms post dismissal. Finally, the litigation did not subject the litigants to additional disclosure properly exempt under the PRA. Therefore, GR 15 did not support

permanent sealing of the litigants' identities.

The court then reviewed the trial court's order against the *Ishikawa* factors, which apply to the use of a pseudonym in litigation:

(1) identify the need to seal court records, (2) allow anyone present in the courtroom an opportunity to object, (3) determine whether the requested method is the least restrictive means of protecting the interests threatened, (4) weigh the competing interests and consider alternative methods, and (5) issue an order no broader than necessary.

Seattle Times Co. v. Ishikawa, 97 Wn.2d 30, 37-39, 640 P.2d 716 (1982).

With respect to the first factor, the court held the trial court abused its discretion because the harms supporting the order were based on the Does' identities as sex offenders, not as PRA plaintiffs. The Does, either as sex offenders or as litigants, did not have a legitimate privacy interest sufficient to protect their identities. Finally, the court held that the action was not brought to preserve a constitutional right, but instead, was based upon a statutory PRA exemption claim.

The court further held the third and fourth factors failed by virtue of the first factor not being met. Finally, the court held that the lack of an expiration date for the trial court's order was overly broad, thus failing the final *Ishikawa* factor.

The court remanded to the trial court with instructions to unseal a document containing the identities of the Does, to use the true names of the Doe litigants in any future proceedings/court records, and also to order that the true names of the Doe litigants be replaced within the SCOMIS indices.

Citizen Action Defense Fund v. Office of Financial Management (WA Supreme Court, No. 103370-2) (June 26, 2025)

By Monique Trammell

The Washington Supreme Court recently decided when the Public Records Act (PRA) requires disclosure in the collective bargaining process. Specifically, what event or action between parties ends the deliberative process, which serves as an exemption to the disclosure requirements. With an 8 to 1 majority, the court found that the deliberative process ends once the final implementation steps have been completed according to Chapter 41.80 RCW. The court notes that this holding is not a blanket rule that covers all documents created as part of a negotiation, rather, the holding is limited to addressing what event is the end point of the deliberative process.

When Citizens Defense Fund (CDF) made a public records request to the Office of Financial Management (OFM) asking for the original proposals made by the union and the state, OFM responded within 6 days, refusing disclosure based on the deliberative process exemption. OFM's basis for their response was the fact that steps 4 and 5 under RCW 41.80 had not been completed at the time, so the documents fell under the deliberative process exemption. CDF subsequently filed suit for failing to timely disclose the documents.

The parties disagreed on whether the deliberative process ends when the state and the union sign the agreement, versus ending when the agreement has been funded. The court examined the matter under Chapter 41.80 of the RCW, the five-step process for negotiating CBAs. The final two steps occur when the governor submits a request for funding to the Legislature, and then it is up to the Legislature to approve or reject the

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request. In this case, the governor had not requested funding from the Legislature, so it was not approved, and the governor had not signed the appropriation bill.

With these missing steps in mind, the court considered the purpose of the exemption in *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 132, 133, 580 P.2d 246 (1978), to enable “frank and uninhibited discussion during the decision-making process” to be applied in a limited scope. OFM argued that the exemption protects public sector collective bargaining from public scrutiny or politicization that would hinder exchange of views, opinions and proposals. The Supreme Court looked to similar Division I cases, which also considered the effect of media comments and public influence on the deliberative process.

Ultimately, the court affirmed the decision by the Court of Appeals, holding that the exemption applies until the Legislature has funded the CBA. The court reasoned that at this point, potential harm from politicization or public scrutiny no longer exists, the agreement is final, and the deliberative process ends.

West v. Walla Walla City Council, 34 Wn. App. 2d 195 (WA Court of Appeals, Div. I, No. 87208-7) (Apr. 21, 2025)

By Natalie Ghayoumi

Arthur West sued the City Council of Walla Walla for declaratory judgment, injunctive relief, and civil penalties, alleging that the council and its individual members violated the Open Public Meetings Act (OPMA), Chapter 43.20 RCW.

In 2022, the City of Walla Walla announced that the council would hold a special meeting to conduct an executive session to evaluate qualifications of candidates for the

city manager’s position, followed by an open session to vote on five finalists for the position. When the council emerged from the executive session, however, the mayor announced that the council members had met and were “unanimously of the opinion” that one of the applicants was superior to the other applicants and that the interview process would not change the hiring decision. The council then unanimously approved a motion to move forward with negotiations to hire the candidate it chose rather than continuing with the process.

A community resident published a letter that the council violated the OPMA by having a “secret meeting.” At a later meeting, the council discussed the offer of employment to the candidate and passed motions to go forward with hiring. Two community members informed the council that they would be sued for violating the OPMA. At another meeting, the council passed a motion directing staff to train council members about the OPMA.

West sued, alleging that the council violated the OPMA by taking final action at a special meeting on a matter that was not specified in the notice, contrary to RCW 42.30.080(3). The council moved to dismiss.

The trial court granted the motion to dismiss, ruling that West’s complaint was barred by laches because it was filed two months after the candidate had been hired (although still within the two-year statute of limitations) and that his claims for declaratory and injunctive relief were moot. The court also ruled that the council did not violate RCW 42.30.080(3) and that the individual council members could not be penalized for any action taken at the meeting because it was lawfully convened. West appealed.

Laches: The Court of Appeals rejected the council’s laches defense, in part because the council did not

meet its burden to show damages from the two-month delay. Because West did not seek to nullify the council’s decision to hire the city manager, it was irrelevant that she had been on the job for two months before the lawsuit was filed.

Injunctive Relief: The court found that the injunctive relief was moot because West did not show a well-grounded fear that the council would violate the OPMA again. To the contrary, the court noted that the council considered OPMA concerns raised by the public and instituted an OPMA training for City Council members.

OPMA Violation: The court explained that two OPMA provisions were relevant because the events took place in executive session during a special meeting. First, RCW 42.30.110(1)(g) allows the public to be excluded for an executive session “[t]o evaluate the qualifications of an applicant for public employment or to review the performance of a public employee.” However, the final action hiring an employee must be taken in a public meeting. Second, RCW 42.30.080 allows a special meeting to be called with at least 24 hours’ notice, but the notice must “specify the time and place of the special meeting and the business to be transacted. Final disposition shall not be taken on any other matter at such meetings by the governing body.” The court held that the council’s decision, made in executive session, to proceed with its preferred candidate constituted a “final action,” which was not permissible under RCW 42.30.110(1)(g) and a “final disposition,” which was not specified in the notice the council provided, therefore it was contrary to RCW 42.30.080(3).

Civil Penalties: The Court of Appeals remanded the matter to the trial court to determine whether the council acted with knowledge, a requirement to award civil penalties

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pursuant to RCW 42.30.120(1). The court considered a council members' statement in the meeting suggesting there may have been an OPMA violation, but it ultimately did not decide whether the council acted with knowledge.

McFarland v. Tompkins, 34 Wn. App. 2d 280 (WA Court of Appeals, Div. III, No. 40158-8) (Apr. 24, 2025)

By Sarah Garrod

At the January 4, 2021, regular meeting of the Walla Walla County Board of Commissioners (WWBOC or the Board), Chairman Tompkins discussed authoring a letter in support of We of Liberty's objectives to oppose the COVID-19 pandemic restrictions imposed by then Governor Jay Inslee. All commissioners agreed to author a letter to the governor and state legislators representing the county.

The WWBOC posted a notice of a special board meeting for January 7, 2021, with an abbreviated agenda that did not include a proposal to author such a letter, although it did list "miscellaneous business" among the meeting topics. The WWBOC sent the special meeting notice to R.L. McFarland, the Appellant.

Prior to the special meeting, McFarland contacted the WWBOC

clerk asking if the board would discuss the proposed letters under miscellaneous business. The clerk responded that she did not know the topic for discussion under miscellaneous business.

During the January 7, 2021, special meeting, the board reviewed a proposed letter regarding the governor's powers and approved sending a letter to the governor opposing pandemic protocols. McFarland attended the board meeting virtually. The WWBOC also sent letters to state legislators who represented Walla Walla County.

McFarland filed suit on September 23, 2022, against Walla Walla County and the three county commissioners, alleging violations of the Open Public Meetings Act of 1971 (OPMA) because the notice for the special meeting failed to specify the business to be conducted. Specifically, the agenda did not include the proposed action of sending the letters.

The superior court agreed that the WWBOC's notice violated RCW 42.30.080 because it insufficiently described the business to be conducted at the special meeting. However, the superior court also ruled: McFarland lacked standing against the county and only had standing to sue the individual commissioners, McFarland presented no evidence that the commissioners knowingly violated the OPMA, he unreasonably delayed the lawsuit,

laches barred the suit, and no justiciable controversy existed.

In a decision filed April 24, 2025, the court of appeals held that (1) McFarland had standing to bring an OPMA claim against the county; (2) the county was a proper party; (3) the action was not moot, (4) laches did not bar the suit, and (5) McFarland presented sufficient evidence to raise a genuine issue of material fact as to whether the individual board members had knowledge of violating the OPMA. The defendants did not appeal the superior court's ruling that the WWBOC violated the OPMA.

The court of appeals agreed with the superior court that the board violated the OPMA in failing to provide such notice as set forth in RCW 42.30.080. The court of appeals remanded McFarland's request for civil penalties for trial to the superior court.

To conclude, the court of appeals reversed the superior court's grant of summary judgment in favor of Walla Walla County and individual members of the Board and granted summary judgment in favor of McFarland on his claim to nullify the Board's letters and the action authorizing the letters. The court of appeals remanded to the superior court to enter an order nullifying the board action and to determine what, if any, other relief was appropriate. //

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

2025 LEGISLATIVE SESSION REPORT

By Richard E. Potter, Chair, Legislative Committee

During the 2025 “long session” of the Washington State Legislature, the Administrative Law Section’s Legislative Committee reviewed 24 bills (not counting companion bills) and monitored 19 of them as they moved through the legislative process.

The areas of interest to the committee were the Administrative Procedure Act (APA), 34.05 RCW, the Public Records Act (PRA), 42.56 RCW, the Open Public Meetings Act (OPMA), 42.30 RCW, the Office of Administrative Hearings law, 34.12 RCW, and other statutes that affect administrative agency procedures, processes, hearings, rulemaking, appeals/judicial review, etc. (as opposed to the substantive law implemented by agencies). Ten bills of interest were passed by the Legislature. The text of bills and committee reports are available on the Legislature’s website at apps.leg.wa.gov/billinfo/.

The governor signed all of the following bills as passed by the legislature.

The effective date of all of the bill provisions of interest to the Administrative Law Section is July 27, 2025, except that the effective date of SB 5702 is January 1, 2026.

Bills affecting the Administrative Procedure Act

Senate Bill 5702 establishes a new process for setting toll rates at the Washington State Transportation Commission. It includes amending

RCW 34.05.030(1) in the APA to exempt from the Act “The transportation commission when exercising its powers as the state tolling authority under RCW 47.56.850 and Section 4 of this act.”

Bills Affecting the Public Records Act

House Bill 1222 concerns public inspection and copying of proprietary financial and security information submitted to or obtained by the Gambling Commission. It was requested by the Gambling Commission. It amends RCW 42.56.270 in the PRA by rewriting the current (10)(b), significantly expanding the verbiage and specifics of what records are exempt from disclosure.

HB 1878 concerns programs and regulations for young driver safety. It includes adding a new section to the PRA: “Any recipient income data collected by the department of licensing as part of the driver training education course voucher program established under Section 11 of this act is exempt from disclosure under this chapter.”

HB 1934 concerns the disclosure of information pertaining to complainants, accusers, and witnesses in an employment investigation. It amends RCW 42.56.250(1)(f) in the PRA to exempt from disclosure specified contents of employee complaint investigation documents. There is a redaction exemption for complaints made by elected officials. After the investigation is complete and the complainant has been notified of the outcome of the investigation, if an elected government official is a complainant, the name and title of such elected government official shall not be redacted from the investigatory records.

SB 5049 concerns the public records exemptions accountability (“sunshine”) committee. It amends RCW 42.56.140(7)(c) in the PRA to change committee meetings from “quarterly” to “four times a year.” This provides flexibility as to the meeting that was supposed to be held in the first quarter, which was during the legislative session.

SB 5102 amends RCW 45.56.270 in the PRA to add a subsection (33) providing a disclosure exemption for “formulas and data public risk pools used to calculate rates for pool member contributions or assessments, and actuarial analyses and reports prepared by or for public risk pools.”

SB 5262 corrects obsolete or erroneous references in statutes administered by the insurance commissioner. It includes amending RCW 42.56.400 in the PRA concerning disclosure exemptions by deleting “(27) Data, information, and documents obtained by the insurance commissioner under RCW 48.02.230” and replacing it with “(30) Documents, materials, or information obtained by the insurance commissioner under RCW 48.150.100, except for providers’ names and business addresses.” //

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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.