



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

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encourage your feedback.**

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We also welcome your suggestions
for topics for future newsletters.

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Tips for Litigating Administrative Cases Before Agencies and Courts: A View from the Bench

IN THE LAST EDITION of the newsletter, Judge Rebecca Glasgow of the Court of Appeals wrote about strategies for neutral decision makers writing administrative decisions. Below, Judge Glasgow and Gabe Verdugo, a member of the Pollution Control Hearings Board and the Shorelines Hearings Board, offer advice for advocates. How can you effectively litigate administrative cases, which are often complex and technical, at the agency level and before a reviewing court?

Q What is unique about litigating administrative law cases that might warrant a different approach in advocating before a court or an agency?

Board Member Verdugo: Administrative law encompasses legal areas that are complex and involve many different statutes and regulations. Although the cases that come before me all concern environmental law, I regularly encounter legal issues and frameworks that I need to learn about to resolve an appeal.

And administrative cases involve more levels of review than you might find in other areas of litigation. The boards I serve on are quasi-judicial, and our review comes before review by a court, but there is always some agency action—or multiple actions—that take place before we review an appeal. Part of your job as an advocate is to make it very clear what we need to review—and to sift out the facts that are irrelevant to our work and might muddy our review.

Also keep in mind that there are some litigation issues that are common in court but that rarely come up before administrative agencies. For example, because the rules of evidence are relaxed in some administrative hearings and discovery may be less formal, an agency you practice in front of may have little experience resolving those issues when they do arise. You may need to refresh

the decision maker's understanding of applicable legal background in more detail than is necessary when you are advocating before a trial court judge who resolves discovery and evidentiary disputes on a daily basis.

**"...some of the
most complex
and difficult
cases we have
on our dockets."**

Judge Glasgow:

At the Court of Appeals, administrative law cases are some of the most complex and difficult cases we have on our dockets. They often involve technical subject matter in

addition to multiple layers of decisions below and precise procedural requirements. A lot of administrative law cases also involve large, complex records containing technical evidence that requires expertise to understand.

As a result, state court judges are grateful for strong, well-organized, and thoughtful briefing and argument in administrative law cases. We are grateful for attorneys who understand the particular challenge these cases present. We appreciate attorneys who recognize they are writing briefs for generalists who are not regularly steeped in administrative law or in the technical subject matter that these cases often present.

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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).

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Tips for Litigating Administrative Cases...

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Q How can a practitioner develop a clear and thorough record at the administrative level?

Board Member Verdugo: *We often hear cases that involve many exhibits, including maps and pictures that can be hard to understand outside of the context of testimony. Make sure you link those exhibits precisely to testimony on the record so that the decision maker can follow along, even when using the transcript later to write a decision. Call out the specific exhibit, page number, and, for maps and images, which part of the map or image you want the decision maker to focus on. Parties often forget this. I try to remind parties or I confirm on the record what is being shown, but I may miss it because I also need to focus on the testimony and objections.*

Also, now that electronic exhibits are the norm, make it as easy as possible for us to navigate through your exhibits. At our boards, we now require hearing exhibits from each party to be in a single PDF with bookmarks for each exhibit so we can quickly find the document you want us to see.

Judge Glasgow: All of these strategies are terrific from the appellate perspective as well. Judges at every level need to be able to tell solely from the transcript what exhibit or portion of an exhibit a witness is talking about. Also, it goes without

saying that you should double check to make sure all of the admitted exhibits are actually included in the administrative record. Where we have problems with the record, they most often involve missing exhibits. Finally, if your appeal may include an assignment of error arguing that an exhibit or certain testimony was improperly excluded, be sure to make an offer of proof and, if necessary, expressly move for an excluded exhibit to be included in the administrative record for purposes of appeal. We cannot evaluate arguments about excluded evidence without a clear picture of what the excluded evidence was.

When briefing on review at any level in state courts, consider pasting snapshots of exhibits, especially key maps or photographs, directly into your briefing to the court. Now that the rules of appellate procedure set briefing lengths by word count instead of page numbers, embedded pictures and maps are not costly. And they can certainly save words and avoid confusion—a picture paints 1,000 words, after all. I can’t overstate how helpful this can be in a complex case where a map or picture is central to the case.

Q What should a practitioner keep in mind when switching between different levels of review—from the initial agency decision through to appellate court review?

Judge Glasgow: If your case moves from a final agency or board decision to review in the state courts, you are shifting from agency and board decision makers, who often have subject matter expertise, to generalist judges. Even those of us who practiced administrative law before we joined the bench gradually lose any expertise we once had. I think that the attorneys who are the most successful

in administrative law cases have a talent for ensuring complex aspects of their cases are easily digestible for generalist judges. This is where the quality of lawyering can really matter in the outcome of an administrative law case.

You are experts, especially when it comes to the regulations you apply on a regular basis, and we need to understand each step of your

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Tips for Litigating Administrative Cases...

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reasoning. We are grateful when clear and well-organized writing keeps us nodding along with you, rather than leaving us confused by shorthand and language only an insider can quickly comprehend. It may be helpful to imagine explaining your argument to a reasonably smart high school or college student who is interested and engaged, but unfamiliar with the topic.

Depending on your case, sometimes our understanding can benefit from briefing that provides some broad historical context for the regulation or agency action near the beginning of your briefing. A generalist reader will be able to understand the specific facts and procedural history more effectively if they have some background knowledge about the broader genesis of a key regulation or agency action. What problem was a regulation adopted to solve?

We also appreciate a clear procedural history that articulates the burdens and standards of review applied at each stage, as well as procedural steps that may have narrowed or refined the issues along the way. For example, if a petition for review in superior court was limited only to certain issues, saying that clearly can be incredibly helpful.

Finally, I think the best advocates ask a nonexpert (such as a law student extern) to review written briefing and help prepare for oral argument. These nonexpert editors and moot court participants can identify any descriptions or analyses that are confusing for a person who is unfamiliar with the subject matter. Leaving time for this step can go a long way toward improving your ability to communicate with a generalist judge.

Q Administrative cases often depend heavily on written advocacy. What are some of the “big picture” qualities of effective briefs in administrative law cases?

Board Member Verdugo: *Make sure you organize your briefing so that the issues that are the most pertinent or compelling in your case are presented first. Question yourself if you find that you strictly follow a chronological order in a brief. If the key action in your appeal is a letter that the agency wrote, you are likely missing a great opportunity to highlight the important issues if you start out your brief with a discussion of a permit application or an agency hearing that took place months before the letter was written.*

Turning back to the complexity of many subjects in administrative law, clearly set out the legal framework that applies to your case, even if you think the decision maker is familiar with it. Consider adding a “legal background” section in your briefing before jumping into complicated factual details. If I don’t have the legal framework for an administrative process fresh in my mind, it will be harder for me to understand why certain dates or steps are important to your case.

On the other hand, be more conservative when it comes to what facts you include in your brief. Many of the cases we see already have long histories of agency action before they come to our boards. Don’t let the important facts of your appeal get bogged down by including too many unnecessary details. After you finish a brief, read it through again and ask yourself whether each date, agency representative, and document you list actually helps present the theory of your appeal, within the applicable legal framework. If the answer is no, cut it. Be a little ruthless. I read far more briefs that include irrelevant details than those that leave out important information.

Judge Glasgow: I agree 100 percent with the advice about a ruthless edit, especially in complex administrative law cases. The best advocates do not make their readers hunt through a haystack of irrelevant detail to find the needle that is the fact that actually drives the outcome. I also like when authors use signals like “importantly” and “significantly” to help us slow down and recognize that a certain fact will be critical to the analysis.

When there are multiple sub-arguments or tangential arguments, it can be hard to structure your analysis in a way that is easy to follow. I always appreciate a structure that helps me and my law clerks write

our opinion. A direct, IRAC-based explanation of your winning analysis gives us the essentials we need to rule in your favor before getting bogged down in various tangential arguments that the parties raise. Don’t make us hunt for the direct path to your winning result. If truly necessary, embed mini IRACs within your primary analysis, but only if absolutely necessary to explain the most direct route to victory for your client.

Only once the primary winning analysis is done should you raise and dismiss tangential points. You can include a subsection, series of paragraphs, or single paragraph at the end that raises and dismisses related arguments that are not central to the core winning analysis. Similarly, you can include an “and another thing” subsection or paragraph that provides less likely alternative pathways to victory.

“Don’t let the important facts of your appeal get bogged down by [too many] details.”

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Tips for Litigating Administrative Cases...

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Q Do you have any technical advice on making briefs more readable?

Board Member Verdugo: Use clear and consistent terminology. If an appeal involves multiple permits, landforms, or other details, remember that you are much more familiar with the intricacies of your case than the reviewing agency. If I can't easily tell what permit you are writing about in a sentence, it will be harder for me to follow your argument.

Use citations very frequently. Other than topic sentences or conclusions summarizing a paragraph, I try to cite after every sentence when writing orders. If I see a brief with citations only at the end of each paragraph, I often find that the non-cited sentences veer from what's actually in the source, or at the very least I'm left to hunt for where the rest of the authority is located. Make it easy for me to follow your sources.

Judge Glasgow: I definitely agree with Gabe's point about citations after every sentence!

I also really appreciate when an author clearly takes time for sentence-level editing. I think fast readers benefit from sentences that reliably contain one idea, fact, or thought per

the Act, the fall protection regulation, etc.). Even if they require more words, your reading judge will suffer a LOT less frustration if you limit yourself to the most ubiquitous acronyms/initialisms (for example, DNA and DUI), plus one or two others per brief, tops.

Judges also use the table of contents more than I ever realized when I was an attorney, especially during oral argument and case conferencing. Well-crafted, short headings make for an easily digestible and useful table of contents.

Finally (because you should write it last!), I'm a fan of a strong introduction that previews the solution to your hardest problem. Start by mimicking the first paragraph in a newspaper story, giving very basic information about who the main characters are, how we got here, and what the current conflict is. Then give a brief summary of your main arguments and why you win. Know what the crux of your case is (the trickiest or hardest hurdle for your side) and briefly explain how you overcome it. Weave in any

"Judges also use the table of contents more than I ever realized... Well-crafted, short headings make for an easily digestible and useful table of contents."

sentence. This forces simple sentence structure and caters to judges who have hundreds of pages to read to prepare for one docket day. A source of frustration for us is the alphabet soup that results from acronyms and initialisms. We are less familiar with your area of law, so wading through unfamiliar acronyms and initialisms really slows down our reading. Come up with a name for the law, agency, or other thing you are talking about (for example, the Board, the Department,

fundamental values that will make the judge *want* to rule in your favor. This type of introduction is helpful for a reviewing or appellate judge because it gives us a preview of how you can overcome the hardest issue or problem in your case, as well as the key fact or two that is most likely to drive the decisions for us. //

VOLUNTEER OPPORTUNITY

with the Office of Administrative Hearings

Please consider volunteering to be a **suitable representative** (SR) to help self-represented parties with substantial disabilities participate meaningfully in telephonic administrative hearings. Rule: WAC 10-24-010.

Parties with disabilities who are appealing a state agency's decision need your help. A party who qualifies for suitable representation is appointed an attorney, LLLT, or legal professional at no cost to them. The role of a SR is to help the party participate in the hearing process and understand the result. Hearings are typically one to two hours in length and may be about food benefits or other public assistance matters, Medicaid, or child support.

Training is available on our public website, is self-paced, accessible, and can be completed online. If you are interested in helping parties with disabilities access administrative justice, please contact the ADA coordinator at the Office of Administrative Hearings for more information.

Contact:

Carla Sullivan

ADA Coordinator

(253) 476-6882

carla.sullivan@oah.wa.gov

2026 LEGISLATIVE SESSION REPORT

By Richard E. Potter, Chair, Legislative Committee

DURING THE 2026 “short session” of the Washington Legislature, the Administrative Law Section’s Legislative Committee reviewed 30 bills (not counting companion bills) and monitored 26 of them as they moved through the legislative process. The areas of interest to the committee were the Administrative Procedure Act (34.05 RCW), the Public Records Act (42.56 RCW), the Open Public Meetings Act (42.30 RCW), the Office of Administrative Hearings law (34.12 RCW), and other statutes that affect administrative agency procedures, processes, hearings, rulemakings, appeals/judicial review, etc. (as opposed to the substantive law implemented by agencies).

Six bills of interest were passed by the Legislature. The bills and committee reports are available on the Legislature’s [website](#).

House Bill 2471 establishes collective bargaining provisions for private sector employers and employees that are not covered by federal law. The bill gives the state’s Public Employment Relations Commission several roles in administering and enforcing the new law. Section 20 of the bill states that actions by the commission and judicial review of commission actions are subject to the Administrative Procedure Act. Effective date 6/11/26.

Senate Bill 5863 includes an amendment of RCW 40.14.030 (Preservation and destruction of public records; Transfer to state archives—Certified copies, cost—Public disclosure). That statute provides a process by which the state’s archivist can discontinue confidentiality protections of records that are more than 75 years old. The amendment states that protections under the Public Records Act (and other specified laws) may not be discontinued regardless of the age of a protected record. Effective date 6/11/26.

House Bill 2508 makes several changes to chapter 43.102 RCW to clarify the scope of authority of the Office of Independent Investigations, and per section 5 of the bill those changes include disclosure exemptions for records held by the office. Section 6 of the bill amends RCW 42.56.240 in the Public Records Act to cross reference those disclosure exemptions. Effective date 6/11/26.

Senate Bill 5892 concerns records from or any existing reports generated by the statewide voter registration database. It amends RCW 29A.84.150 (Elections; crimes and penalties; Misuse, alteration of registration database)

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2026 Legislative Session Report

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to regulate and limit the actions of state and local elections officers with regard to such records and to impose criminal penalties for violations of those provisions. Section RCW 42.56.425(4) (Election security) in the Public Records Act already includes such restrictions. The bill makes a minor wording change to that subsection and adds: "A knowing violation of this subsection is a violation of RCW 29A.84.150." Effective date 3/25/26.

Senate Bill 6081 amends chapter 70.58A RCW (Vital statistics) and 46.20 RCW (Drivers' licenses—Identicards) to protect the privacy of persons' sex designation information. It amends section RCW 42.56.230 in the Public Records Act to exempt such information from disclosure. Effective date 3/16/26.

Senate Bill 6002 regulates the use of automatic license plate reader systems and the data they create. Section 5 of the bill will be a section in a new chapter in Title 10 RCW (Criminal Procedure), which provides that such data "is not subject to disclosure under" the Public Records Act, except for bona fide research that does not contain individually identifiable information. The bill does not amend the Public Records Act to add this disclosure exemption there. Effective date 3/30/26.

The Code Reviser will add the new records privacy protections to its list of disclosure exemptions, which is available [here](#) (scroll down). //

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.

ONLINE CLE Everything You Ever Wanted to Know About Protection Orders

Join us for a webinar to hear Alex Gerard, a veteran of the Protection Order process, take the audience through the process and pitfalls of filing for an order.

SEPTEMBER 24, 2026

12:00 - 1:30pm PST

1.50 Law & Legal Procedure Credits

\$25 for Standard/Non-Section Members

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CASE LAW UPDATE

**Wash. Farm Bureau, et al
v. Washington State Dep't of Ecology**
WA Supreme Court, No. 103413-0
(June 25, 2026)

By Eileen M. Keiffer

In an en banc decision, the Washington Supreme Court upheld the Washington State Department of Ecology (Ecology) on issues related to a petition for rulemaking filed by the Washington Farm Bureau (WFB) regarding the Washington Climate Commitment Act (CCA). The CCA aims to address the effects of greenhouse gas emissions. Fuel suppliers are subject to caps on emissions under the CCA, but there is an exemption for fuel used for exclusively agricultural purposes (the "agricultural exemption") as long as the buyer provides the supplier with an exemption certificate.

In 2022, Ecology adopted a final rule regarding the "agricultural exemption." After becoming aware that some fuel suppliers added a fuel surcharge to offset economic losses from the emissions cap, Ecology published interim guidance. That guidance explained that fuel suppliers could use a Department of Revenue form to prove fuel sales fell within the agricultural exemption.

WFB petitioned for rulemaking, asking Ecology to open a rulemaking to establish a more workable method to claim an agricultural exemption. Ecology denied the petition for two reasons—first, Ecology reasoned that the interim guidance it issued was sufficient and second, that Ecology lacked authority to allocate refunds for fuel surcharges. WFB filed a petition for declaratory judgment in superior court, as well as a request for review under the Administrative Procedures Act, Ch. 34.05, RCW. WFB alleged that Ecology's rule and denial of the petition exceeded Ecology's statutory authority and was arbitrary and capricious. The superior court dismissed WFB's suit with prejudice.

The Supreme Court rejected WFB's position that Ecology purportedly exceeded its statutory authority by adopting a rule which applied the agricultural exemption only to suppliers and not end users. Agency rules are presumed valid, and are only invalidated if inconsistent with the underlying statute. The court found the CCA imposes obligations on fuel suppliers (not end users); therefore, suppliers are the ones who can claim the agricultural exemption. The court found that the rule was reasonably consistent with the statute, and therefore valid. The court also noted that WFB's quarrel is with the text of the CCA, rather than any action by Ecology.

The court also rejected WFB's arguments that Ecology's actions were arbitrary and capricious. Agency action is arbitrary and capricious only if an agency engages in

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Case Law Update

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conduct that is “willful and unreasoning action, taken without regard to or consideration of the facts and circumstances surrounding the action.” *Abbenhaus v. City of Yakima*, 89 Wn.2d 855, 858, 576 P.2d 888 (1978). If the issue is a matter for two or more opinions, even if the court believes the decision to be erroneous, it will not set aside a decision taken after due consideration by the agency.

The court found Ecology did engage in due consideration, given Ecology acknowledged the challenges to trace fuel to exempt end uses. The court also noted Ecology’s consideration of other alternatives and its reasoned determination that the alternatives were not reasonable. Additionally, the court rejected allegations that Ecology’s denial of WFB’s rulemaking petition was arbitrary and capricious, because the agency demonstrated due consideration for such denial.

West v. Washington State Legislature WA Court of Appeals, No. 60104-4-II (Feb. 24, 2026)

Nixon v. State of Washington
WA Court of Appeals, No. 60181-8-II
(March 10, 2026) (Published in part)

By Monique Trammell

On Feb. 24, 2026, the Washington State Court of Appeals affirmed the lower court’s holding that under both the constitutional separation of powers doctrine and Article II, Section 17 of the Washington Constitution, Legislative deliberations are privileged from disclosure under the Public Records Act (PRA). The PRA generally provides a broad mandate to agencies, including the Legislature, to allow public access to all records unless they fall under an exemption. Plaintiff West argues that the speech and debate clause under Article II, Section 17 of the Constitution does not provide a privilege to exempt internal legislative deliberations. The clause states “[n]o member of the legislature shall be liable in any civil action or criminal prosecution whatsoever, for words spoken in debate.” Similarly, Article I, Section 6 of the United States Constitution provides similar protections, stating “...in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses...and for any speech or debate in either house, they shall not be questioned in any other place.” West contends that such deliberations that occur outside the Senate and House floor are not intended to be considered under the term “debate.”

Concluding that the breadth of “debate” is ambiguous, the court examined the legislative history and intent of the clause. West argued that the distrust of the Legislature

is a key factor in the original intent of the inclusion of the speech and debate clause, so the exemption should be narrowly construed. However, the court reviewed the parliamentary origins of the speech and debate clause, as well as case law emphasizing the importance and expansive interpretation of the clause. The court recognized the expansion of legislative privilege beyond pure speech or debate to matters that are “an integral part of the deliberative and communicative processes” as a key factor to ensure legislators can do their job for the public benefit without fear of prosecution or the burden of defending themselves. As the court aptly stated, “...compulsory disclosure of internal legislative deliberations under the PRA threatens the independence and integrity of the legislature.” In weighing the value of the PRA versus constitutional protections, the court relied on *Freedom Found. v. Gregoire*: “[T]he PRA must give way to constitutional mandates.” *Freedom Found.*, 178 Wn.2d at 695. This was a key factor in reviewing West’s second argument that the separation of powers doctrine does not necessitate a legislative privilege from disclosure. West argued that the PRA should be strictly construed, to ensure the judiciary carries out the Legislature’s will, relying on *Associated Press v. Washington State Legislature*. The court found this was misplaced, since *Associated Press* relied on the interpretation of a statute; however, constitutional interpretation is at issue here, and these matters are within the purview of the judiciary. “The trial court did not exceed its judicial power by holding that the speech or debate clause applies.” *West v. Wash. State Legislature*, 36 Wn. App. 2d 609, 584.

In another case examining the extent of legislative deliberations exemptions under the PRA, *Nixon v. Washington* took a closer look at the separation of powers doctrine. The court also considered *Freedom Found. v. Gregoire* as the overarching precedent, which established an executive communications privilege for the governor. The court examined the purpose of this privilege with the same considerations in *West*, foremost, the necessity for “robust and unimpeded communications that enhance the quality of decision-making” regardless of whether the speaker is a legislator or the governor. *Nixon*, 36 Wn. App. at 585; *Freedom Found.*, 178 Wn.2d at 696-97. The court echoed the narrow holding of the trial court, noting that this holding applies to a specific set of legislative documents, only regarding bills contemplated or introduced in either house of the Legislature. Even with this narrow holding, both *Nixon* and *West* are reinforcing the importance of legislative deliberation protections, so it will be interesting to see how far these protections go in a world with ever-changing communication platforms. //