

## ADMIN. LAW SECTION NEWSLETTER

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<p><b>Spring 2022</b></p>	<p>Legislative Session Report          ETHOS - Examining the Historical Organization and Structure of the Bar          Volunteer Opportunity          Call for Nominations 2022 Frank Homan Award</p> <p>Case Law Update –</p> <ul style="list-style-type: none"> <li>• <i>Port of Tacoma v. Sacks</i>, 19 Wn. App. 2d, 495 P.3d 866 (2021) – Concerns pay for out-of-town travel per the Minimum Wage Act (49.46 RCW): statutory interpretation, deference to agencies’ interpretations.</li> <li>• <i>Northwest Pulp &amp; Paper Assoc. v. Dep’t of Ecology</i>, 20 Wn. App. 2d 533, 500 P.3d 231 (2021) – Concerns a challenge the under the <b>Administrative Procedure Act</b> of the Department’s Water Quality Program Permit Writer’s Manual provision regarding the release of polychlorinated biphenyls (PCBs) into Washington’s surface waters. Held: the Manual’s provision guidance for agency staff, not a “rule” subject to the APA’s rule-making requirements.</li> </ul>
<p><b>Winter 2022</b></p>	<p>2021 Frank Homan Award          Legislative News          OAH Style Manual          Mentorship Program</p> <p>Case Law Update –</p> <p><i>Sarepta Therapeutics, Inc. v. State of Washington, Health Care Authority, et. al</i>, 497 P.3d 545 (2021) – Per the <b>Administrative Procedure Act</b> Sarepta Therapeutics, Inc. (Sarepta) lacked standing to challenge HCA’s medical necessity and hierarchy of evidence rules for the Medicaid program.</p>
<p><b>Summer/ Fall 2021</b></p>	<p>2021 Frank Homan Award          Mark Your Calendar          Recap of 2021 Legislative Session</p> <p>Case Law Update –</p> <ul style="list-style-type: none"> <li>• <i>Washington Association of Municipal Attorneys v. Washington Coalition for Open Government</i>, Court of Appeals Div. I, 2020 WL 7342171 (Dec. 14, 2020, unpublished) - Clarified which entities are subject to the <b>Public Records Act</b>, RCW Ch. 42.56 (PRA), finding that the Washington Association of Municipal Attorneys (WSAMA) is not subject to the Act.</li> <li>• <i>Wright’s Crossing, LLC. et. al. v. Island County</i>, et. al, Court of Appeals Div. I, 2021 WL 1346122 (Apr. 12, 2021, unpublished) – An appeal per the <b>Administrative Procedure Act</b> of a Growth Management Hearings Board dismissal of an appeal of the County’s decision to not docket Mr. Wright’s proposal for an expansion of the Oak Harbor Urban Growth Area: issues regarding standards of review (de novo) and statutory interpretation.</li> <li>• <i>Martin Luther King, Jr. County Labor Council of Washington v. City of Seattle</i>, Court of Appeals, Div. I, 2021 WL 1175303 (March 29, 2021, unpublished op.) – A challenge to the City’s environmental impact statement for an extension of the Burke-Gilman Trail through Ballard’s maritime and industrial district: “appearance of fairness” issues with regard to the hearing examiner.</li> <li>• <i>Blue Spirits Distilling, LLC v. Washington State Liquor &amp; Cannabis Bd.</i>, 15 Wn. App. 2d 779, 478 P.3d 153 (2020) – Concerns refund claims for invalidated fees for distillery licenses: issues included whether Blue Spirit must proceed under the <b>Administrative Procedure Act</b> because the sole issue is a claim for money damages or compensation and, Blue Spirit contended, the Board does not have statutory authority to determine the claim. Court held the Board has such authority and rejected the claim that exhaustion of administrative remedies was not required because it would futile in light of the Board’s failure to respond to the refund claim.</li> </ul>
	<p>Legislative Session</p>

**Spring  
2020**

State Agencies' Indexes of Orders – Part 2: New DCYF Rule and Online Resource  
Individuals Needed for Section Executive Committee Positions and Section Publication  
Committees  
The Frank Homan Award  
CLE Stuff

Caselaw Update -

- *Annette Holding LLC d/b/a Super Duper Foods v. Northwest Clean Air Agency*, Division III COA, Unpublished Op. (2020), 2020 WL 2731097 – The court of appeals held that a notice of violations issued by the Northwest Clean Air Agency identifying the alleged violator by its tradename rather than its limited liability company name.
- *Ehrhart v. King County*, \_\_\_ Wn.2d \_\_\_, 460 P.3d 612 (2020) – The plaintiff was the estate of a man that died from hantavirus. It alleged that King County negligently failed to issue a general health advisory after receiving a report of a previous report of a nonlethal hantavirus case. The supreme court held that the County was not liable due to the “public duty doctrine,” which protects government from tort claims where the duty allegedly breached is to the general public and not to the individual plaintiff. The court discussed exceptions to this immunity and concluded that none applied. The court distinguished the “discretionary immunity” doctrines and found that they too did not apply in this case.
- *Loyal Pig, LLC v. Dep’t of Ecology*, Division III COA Published Op. (2020), 2020 WL 2122891 – The case involved the complexities of water rights law and regulations. The administrative law issue was whether the Department’s interpretation of a statute was a “rule” so that a change in that interpretation must be made through the formal rulemaking process. The court decided that because Ecology merely interpreted a clear statute, it did not engage in rulemaking.
- *National Parks Conservation Ass’n v. Dep’t of Ecology*, \_\_\_ Wn. App. 2d \_\_\_, 460 P.3d 1107 (2020) – The National Parks Conservation Association (NPCA) appealed the Department’s issuance of the permit authorizing BP West Coast Products LLC (BP) to take certain actions at its Washington refinery. the Pollution Control Hearings Board (PCHB) issued a final decision in favor of the Department and BP. NPCA submitted a petition for judicial review to the Thurston County superior court within the 30 day time limit prescribed by the Administrative Procedure Act, but the clerk rejected the filing because it did not have a cover sheet as required under court Administrative Rule 2. The subsequent re-filing was outside of the 30 day period. The court of appeals ruled that NCPA complied with the statutory requirements necessary to invoke the superior court’s jurisdiction and AR 2 does not impose a jurisdictional requirement.
- *Cascadia Wildlands v. Dep’t of Fish and Wildlife, and Resources Coalition, Inc.*, Division I COA, Unpublished Op. (2020), 2020 WL 1675792 -- At issue was an interpretation of RCW 77.55.091(1), which authorizes the Department to allow small scale prospecting and mining without a permit if conducted in accordance with rules established by Department. The Department enacted a rule, which was challenged, and then it revised the rule. The court held that the revision made the challenge to the prior rule moot because no relief could be granted and there was no reason to believe this court need address the now-disregarded theory supporting the former regulation.