

Spring 2014
MPA Administrative Law
Mondays, 6-10pm, 4 credits
Adjunct Faculty: Grace O'Connor
oconnorg@evergreen.edu
"Office hours" by appointment

Public/Administrative Law Syllabus

Description:

Public law is the law of relationships between individuals and government. As you might imagine, this covers a wide surface area of law. The most expansive of those, at least in Washington state, is administrative law. In a modern bureaucracy, a legislative body must delegate much of its rule-making authority to the agencies that serve its constituents. Agency regulations don't sound very glamorous, but they dictate much of our life in civil society. Many activities of daily life, from driving to drinking water, are regulated in some way by agency rules. This course will explore administrative rule-making, including: how agencies get the authority to do what they do (i.e., constitutional law), how they make rules, the public's role in the rule-making procedure, and how these rules are challenged. This course will also consider the interplay between law and policy, particularly from a budgeting perspective, and touch on areas of law most salient in public administration, such as the Public Records Act and ethics laws.

Learning Objectives:

1. Understand how laws and regulations are created, implemented, and interpreted.
2. Gain a basic knowledge of how legal system works, including how agency rules are challenged
3. Acquire basic comfort with reading judicial decisions and legal briefing
4. Acquire a basic knowledge of how to read laws and regulations, but not a "law school" education.
5. Become aware of laws that apply in most state agency settings, such as public disclosure and ethics.

Readings:

Texts

1. *Administrative Law and Process in a Nutshell (Nutshell)* (5th Edition) Gellhorn & Levin, West Publishing, 2006, ISBN 0-314-14436-6.

** You will likely find this to be the easiest reading to digest. It may be best to start with any assignments from this book for the week's reading, because it may provide helpful context for the more theoretical readings elsewhere.*

2. *Handbook of Public Law and Administration (Handbook)*, ed. Cooper and Newland, Jossey-Bass Publishers, San Francisco, 1997, ISBN 0-7879-0930

Moodle-Available Readings

1. Jay Feinman, *Law 101: Everything You Need to Know About American Law*, Chapters 2 & 3
2. *The Rise and Rise of the Administrative State*, Gary Lawson, *Volume 107 Harvard Law Review*, beginning p. 1231 (1994)
3. *Jenkins v. Washington State Dept. of Social and Health Services*, 160 Wn.2d 287, 157 P.3d 388 (2007)—including the dissent!—**and** legal briefs for that case
4. *Knudsen v. Washington State Executive Ethics Bd.*, 156 Wn. App., 852, 235 P.3d 835 (2010)
5. *Procedural Rules Under Washington’s Public Records Act: The Case for Agency Discretion*, William D. Richard, 85 Wash. L. Rev. 493 (2010)
6. *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012)
7. *Chevron v. Natural Resources Defense Council*, 467 U.S. 837, 104 S. Ct. 2778, 81 L.Ed.2d 694 (1984)
8. *Goldmark v. McKenna*, 172 Wn.2d 568, 259 P.3d 1095 (2011)
9. *City of Seattle v. McKenna*, 172 Wn.2d 551, 259 P.3d 1087 (2011)

Available on the legislature’s website, www.leg.wa.gov, Laws and Agency Rules Tab

Chapter 34.05 RCW (Washington State Administrative Procedures Act)
Chapter 42.56 RCW

Schedule:

****** Schedule is subject to change at any time! Please pay attention to emails or Moodle notification of any changes.**

Monday, March 31

Topics	Reading	Activities
Course Overview <i>What is public law?</i> How courts work Con Law 101 <i>Non-delegation doctrine</i>	<ul style="list-style-type: none"> • Lawson, <i>The Rise and Rise of the Administrative State</i> • <i>Handbook</i>, Chapters 1 & 2 	Discussion/Instruction on readings. Small Group: Before class , spend some time thinking

	<ul style="list-style-type: none"> • <i>Nutshell</i>, Chapter 1 • <i>Law 101</i>, Chapter 2 	about Lawson's thesis. Come to class prepared to discuss it in small groups. These discussions can be a springboard for Assignment #1 (below)
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Monday April 7

<u>Topics</u>	<u>Reading</u>	<u>Activities</u>
Due Process First Amendment Intro to rule-drafting	<ul style="list-style-type: none"> • <i>Law 101</i>, Chapter 3 • <i>Nutshell</i>, Chapter 6 • Skim Part III of RCW 34.05 • <i>Handbook</i>, Chapter 7 	Discussion/Instruction on readings Small-Group: Before class , find a news story involving an agency action. Did the action involve a rule? Or was it an informal action? Did the action implicate the topics we've covered thus far? Be prepared to discuss in small group.

Monday April 14

<u>Topics</u>	<u>Reading</u>	<u>Activities</u>
Rule-drafting cont'd Rule challenges	<ul style="list-style-type: none"> • <i>Nutshell</i>, Chapter 7, 9 • <i>Handbook</i>, Chapter 4-6, 12 	Discussion/Instruction on readings Guest: Ann Essko, Assistant Attorney General Small group: Draft a WAC exercise!

Monday April 21

<u>Topics</u>	<u>Reading</u>	<u>Activities</u>
Rule Challenges cont'd Judicial Review	<ul style="list-style-type: none"> • <i>Nutshell</i>, Chapter 3, 10 • <i>Handbook</i>, Chapter 25 • Skim Part IV and V of RCW 34.05 • Skim WAC 388-106, with particular attention to 388-106-0050 through 388-106-0145 • <i>Jenkins v. DSHS</i> 	Discussion/Instruction on readings Guests: Michael Young, Assistant Attorney General, & Meagan MacKenzie, Attorney, Northwest Justice Project Small Group: Revisit your WAC. Do you see any

	<p>(including dissent) & skim Supplemental Briefs</p> <ul style="list-style-type: none"> • <i>Chevron v. NRDC</i> 	<p>potential problems with it? If you were a stakeholder, what concerns might you have about it? Be prepared to discuss your group's analysis with the class.</p>
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Monday April 28

<u>Topics</u>	<u>Reading</u>	<u>Activities</u>
<p>Government Transparency Public Records Act Government Lawyers</p>	<ul style="list-style-type: none"> • <i>Nutshell</i>, section E & F of Chapter 4 • <i>Handbook</i>, Chapter 22, 26 • <i>Procedural Rules Under Richard, Washington's Public Records Act</i> • Skim RCW 42.56 • <i>McKenna v. Goldmark</i> • <i>City of Seattle v. McKenna</i> 	<p>Discussion/Instruction on readings</p> <p>Guest: Nancy Krier, Assistant Attorney General for Open Government</p> <p>Small group: Workshop your PRA reaction paper. This will include substantive and copy-edit (constructive!) critiques of your peers' papers.</p>

Monday May 5

<u>Topics</u>	<u>Reading</u>	<u>Activities</u>
<p>Government Lawyers cont'd (if necessary) Ethics in state government</p>	<ul style="list-style-type: none"> • <i>Handbook</i>, Chapter 21 • <i>Knudsen v. Washington State Executive Ethics Bd.</i> • Skim RCW 42.52 • Browse the Washington State Executive Ethics Board website (be sure to browse one of their Annual Reports, where you will find the mission statement and other helpful information about the board) 	<p>Discussion/Instruction on readings</p> <p>Guest: TBA</p> <p>Small Group: Before class, take the quiz on the Ethics Board website. It should take about 15 mins. Don't agonize over your answers—it's to learn, not to judge. Print out your answers to bring to class. We'll discuss the exercise in small group.</p>

Monday May 12

<u>Topics</u>	<u>Reading</u>	<u>Activities</u>
<p>Law and Policy: Budget</p>	<ul style="list-style-type: none"> • <i>Handbook</i>, Ch. 24 & 28 • <i>McCleary v. State</i> 	<p>Discussion/Instruction on readings</p> <p>Guest: Paula Moore, Office of Financial Management</p>

Monday May 19

Topics	Reading	Activities
A word about federalism and preemption Legal research	<ul style="list-style-type: none">• <i>Handbook</i>, Part III	Discussion/Instruction on readings. On to the library for some hands-on legal research instruction

Monday May 26

NO CLASS – MEMORIAL DAY

Monday June 2

Topics	Reading	Activities
Alternative Dispute Resolution Summing Up (<i>and what didn't we cover?</i>)	<ul style="list-style-type: none">• <i>Nutshell</i>, Ch. 5 (skip parts H & I)• <i>Handbook</i>, Chapter 30 & 31	Discussion/Instruction on readings Presentations on Court Visits

Assignments:

Assignment #1: Write a (minimum) three page, 12 pt. font, double-spaced reaction to Lawson's article, taking a pro or con position to his thesis. Feel free to draw on your own experiences in or with state agencies to inform your position. **Due:** Email to me by Monday April 7 by 5pm.

Assignment #2: Write a (minimum) three page, 12 pt. font, double-spaced reaction to Richard's article. Consider the extent to which the PRA hinders or helps the effective delivery of government services, in your opinion. Do you agree with Richard's solution to what he sees as a problem? Why or why not? Do you agree that there is a problem? **Bring finished draft to class on April 28 for peer workshop. Following the workshop, you may revise if you wish. Due to me via email by Monday May 5 by 5pm.**

Assignment #3/Project

Sometime after our first class meeting but before our last, choose any court to visit and observe. To get the full flavor of the proceedings, attend at least two hours of hearings. Attend in person; televised proceedings, while convenient, limit your point of view to that of the camera's.

Write a (minimum) 3-5 page, 12 pt. font, double-spaced report on your court visit. Include responses to the questions below (though you need not hit each and every question). You will give a five to ten minute oral summary of the most interesting parts of your experience

to the class during our final meeting. **Due via email by Monday June 2 by 6pm or you may turn a hard copy in at the beginning of class that evening.**

1. What court did you visit? Date and time?
2. Why did you select this particular court to observe?
3. Who is the decision-maker? One or more judges? A court commissioner? An administrative law judge? A jury?
4. What is the issue or question before the court that needs to be resolved?
 - a. Is there a legal issue?
 - b. Is there a factual issue?
5. What is the role of each person involved in the proceeding?
6. What law do the parties cite as applying to the issue before the court? Constitutional? Statutory? Case law? Rules and regulations?
7. How was the issue resolved?
8. Were you surprised by anything in the proceedings? What?
9. Do you believe the parties were treated fairly? Give examples.
10. Do you believe the outcome was just? Why or why not?
11. What did you learn from your observation?
12. What changes would you recommend to the court? Why?

Assignment 4—Final Project

Some time in the first couple weeks of school, you will receive a fact-pattern involving an agency action and a challenge to that action. From the perspective of an agency administrator, you will be asked to write a memo (single spaced, with appropriate paragraph breaks) to your agency's assigned Assistant Attorney General, explaining the action and the challenge. Additional details will be available in the assignment description. There is no minimum or maximum length for this assignment, but I will be looking for it to reflect a broader sweep of the concepts we've covered and the thinking we've done, so the length will need to reflect appropriate consideration of these themes. This is not a test. It is a chance to exercise some critical thinking skills in this area. **Due via email Tuesday May 27 by 5pm.**

Housekeeping:

Participation & Attendance: Students are required to attend each class meeting in its entirety. Participation includes focusing on class content, speaking in class and seminar, listening to others, taking notes, completing class interactive exercises, avoiding distractions, and listening to and engaging with the guest speakers. If an absence is unavoidable, please notify me prior to a class and/or seminar absence. *After one absence per quarter (4 hours), make-up work may be assigned at my discretion, case-by-case. Makeup work must be completed by the deadline assigned to ensure full receipt of course credit. After three absences (12 hours) you may be denied full credit. After reoccurring weekly absences (missing an hour of class week to week) you may be denied full credit.* Finally, if you do miss a class, you are still expected to do the reading for that class meeting and turn in any assignments that were due that class date.

Late assignments: Turning in assignments late is unacceptable. However, if there is an unavoidable need to turn in an assignment late, please contact me via email no later than the original assignment due date to discuss options. Parameters are left to my discretion on a situation-by-situation basis. Late assignments must be completed by the revised due date to ensure full receipt of course credit.

Credit: Students will receive 4 graduate credits at the completion of the quarter if all course requirements have been satisfactorily completed to meet course objectives. No partial credit will be awarded. Incompletes will not be awarded. Full loss of credit decisions will be made by the faculty. *Plagiarism (i.e., using other peoples' work as your own) will result in total loss of credit for the class and may result in expulsion from the MPA program.* Failing to complete one or more assignments, completing one or more assignments late, or multiple absences may constitute denial of total credit. Unexcused absences or lack of academic work may result in no credit at my discretion. Students will also be evaluated based upon their progress towards the learning goals that will be assessed from classroom, seminar, and assignment performance. Decisions for no credit will be made when necessary, based on absence or failure to meet academic course requirements.

Evaluation: Written self-evaluations and a faculty evaluation are required for credit at the end of the quarter.