

Winter 2015
MPA Public Law
Tuesdays, 6-10pm, 4 credits
Adjunct Faculty: Grace O'Connor
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"Office hours" by appointment

Public Law Syllabus

Description:

Law and policy are two sides of the same coin—you can't make one without the other. Agency and non-profit administrators interface with the law every day, be it administrative regulations, litigation impacting program mission, public records, or public service ethics laws. This course seeks to give MPA students a solid grounding in the areas of the law that relate to policy-making. It 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, including from a budgeting perspective, and touch on areas of law most salient in public administration, such as the Public Records Act, employment law, 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 9780314144362
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 other notifications!!**

WEEK 1: Tuesday, January 6

<u>Topics</u>	<u>Reading</u>	<u>Activities</u>
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>, Part I • <i>Law 101</i>, Chapter 2 	Discussion/Instruction on readings. Small Group: Before class , spend some time thinking about Lawson’s thesis. Come to class prepared to discuss it in small groups. These

		discussions can be a spring-board for Assignment #1 (below)
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WEEK 2: Tuesday January 13

<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 1, 6 • <i>Handbook</i>, Chapter 7 	<p>Discussion/Instruction on readings</p> <p>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.</p>

WEEK 3: Tuesday, January 20

<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 5 sections B-G, Chapter 9 • <i>Handbook</i>, Chapter 5, 12 • Skim Part III of RCW 34.05 	<p>Discussion/Instruction on readings</p> <p>Guest: Ann Essko, Assistant Attorney General</p> <p>Small group: Draft a WAC exercise! Materials passed out in class</p>

WEEK 4: Tuesday January 27

<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 sections A - F only, Chapter 10 sections C & D only • <i>Handbook</i>, Chapter 4, 6, 25 • Skim Part IV and V of RCW 34.05 • Skim WAC 388-106, with particular attention to 388-106-0050 through 388- 	<p>Discussion/Instruction on readings</p> <p>Guests: Michael Young, Assistant Attorney General, & Meagan MacKenzie, Attorney, Northwest Justice Project</p> <p>Small Group (Time Permitting): Revisit your WAC. Do you see any potential problems with it? If</p>

	106-0145 <ul style="list-style-type: none"> • <i>Jenkins v. DSHS</i> (including dissent) & skim Supplemental Briefs • <i>Chevron v. NRDC</i> 	you were a stakeholder, what concerns might you have about it? Be prepared to discuss your group's analysis with the class.
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WEEK 5: Tuesday February 3

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

WEEK 6: Tuesday, February 10

<u>Topics</u>	<u>Reading</u>	<u>Activities</u>
Government Lawyers cont'd (if necessary) Ethics in state government	<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) 	Discussion/Instruction on readings Guest: Neil Gorrell, former member of the Executive Ethics Board 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.

WEEK 7: Tuesday, February 17

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

WEEK 8: Tuesday, February 24

<u>Topics</u>	<u>Reading</u>	<u>Activities</u>
Legal research	<i>Handbook</i> , Part III (but discussion on this topic will occur at March 3 class meeting)	Hands on legal research instruction

WEEK 9: Tuesday, March 3

<u>Topics</u>	<u>Reading</u>	<u>Activities</u>
Federalism	Research for your memo	Discussion/Instruction on readings. Guest: TBA Small Group: TBD

WEEK 10: Tuesday, March 10

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

Assignments:

I expect all written assignments to be your best effort, proofread and polished.

Assignment #1: Write a 2-3 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, but please avoid informal “I” writing to the extent it supplants critical thinking—this should still be an expository essay! **Due: Tuesday January 13 by 6pm.**

Assignment #2: Write a 2-3 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. Questions to think about: 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 February 3 for peer workshop. Following the workshop, you may revise if you wish. Due to me: Tuesday February 10 by 6pm.**

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 one hour of hearings. Attend in person; televised proceedings, while convenient, limit your point of view to that of the camera. You may complete this assignment in pairs or small groups of 3-4 people.

After your visit, whenever it is, email me the following: the court you visited, date and time, who the presiding judge(s)/commissioner was, and what type of proceeding it was. If you are working with others, each person must email me the above information.

At our last class meeting, 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. If you are working as a group, everyone must have equal air time. The questions below can help focus your thoughts (and you can have them in mind while viewing your proceeding), but you needn’t discuss each and every question.

1. Why did you select this particular court to observe?
2. 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?
3. What is the role of each person involved in the proceeding?
4. What law do the parties cite as applying to the issue before the court? Constitutional? Statutory? Case law? Rules and regulations?
5. How was the issue resolved?
6. Were you surprised by anything in the proceedings? What?
7. Do you believe the parties were treated fairly? Give examples.
8. Do you believe the outcome was just? Why or why not?
9. What did you learn from your observation?
10. What changes would you recommend to the court? Why?

Assignment 4—Final Project

Some time in the first couple weeks of the quarter, 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. This is not a test. It is a chance to exercise some critical thinking skills in this area. **Due Tuesday March 3 by 6pm.**

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 are required for credit at the end of the quarter. Faculty evaluations are greatly appreciated and encouraged.