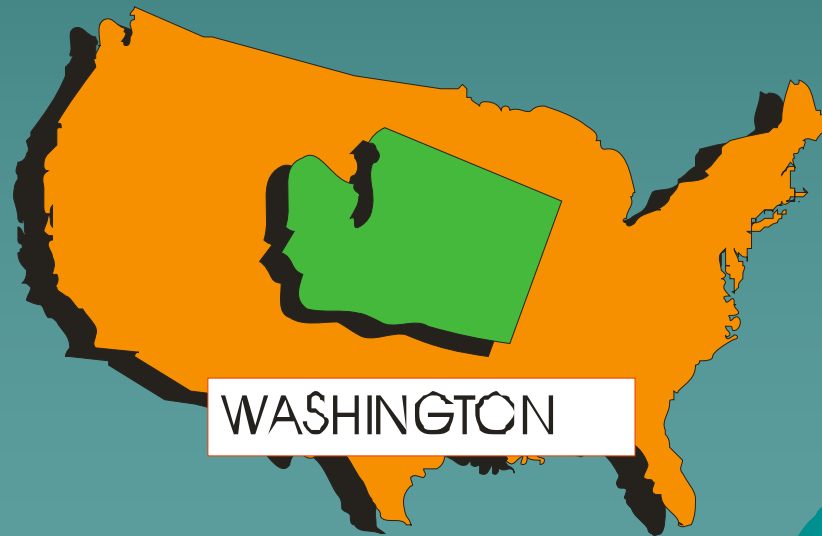


The Appearance of Fairness Doctrine

Courtesy of MRSC
Presented by Craig Knutson
Weed, Graafstra and Benson
360-568-3119

Washington's Act

- ◆ A judicial doctrine first - 1969
- ◆ Codified in Ch. 42.36 RCW in 1982



Purpose

- ◆ Bolster public confidence in fairness of quasi-judicial proceedings
- ◆ Proceedings must be free from even appearance of unfairness
- ◆ Governed by same rules of fairness that apply to courts

Applies to:

- ◆ “Quasi-judicial” actions:
 - Actions that determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding.
 - Actions of city or county councils or commissions, planning commission, hearing examiner, board of adjustment, or hearing examiners.

Does not apply to:

- ◆ Local legislative actions:
 - adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents;
 - adopting area-wide zoning ordinances;
 - adopting zoning amendment that is of area-wide significance.

Application:

- ◆ If you have bias that amounts to inability to provide fair hearing should be disqualified
 - Financial
 - Personal - family relationship
 - Prejudgment

Prohibits:

- ◆ “Ex parte” means: Communications that take place outside of the formal hearing process on a quasi-judicial matter while matter is pending.



A Matter is Pending:

- ◆ After the time the initial application is filed;
- ◆ Or after the time an appeal is filed with the local government.

Cure Ex Parte Communication

- ◆ Place on the record any such communication
- ◆ Make communication public and allow opponents right to rebut substance

Challenge Must Be Timely

- ◆ Must be raised as soon as the basis for disqualification is made known.
- ◆ If basis is known or should reasonably have been known prior to issuance of decision and is not raised, it may not be relied on to invalidate decision.

Allowable Actions

- ◆ May express opinion in campaigns
- ◆ May participate in prior advisory decisions ???
- ◆ Rule of Necessity

Consequences of Violation

- ◆ If participation challenged in timely manner, a court can invalidate.
- ◆ A new hearing and decision without participation of disqualified participant.
- ◆ Monetary damages ???

Appearance of Fairness Doctrine

◆ Remedies for Violations



- Actions taken in violation of the Appearance of Fairness Doctrine are **VOID**.
- If court finds violation, remedy is it so rehear matter without violating Appearance of Fairness Doctrine.
- Cost = Time and Money to repeat hearing.
- Violation of Appearance of Fairness Doctrine may or may not be a basis for damages. *Alger v City of Mukilteo* (1987) but see RCW 64.40.