

# Civil Service: An Overview

## 36<sup>th</sup> Annual Civil Service Conference

September 18-19, 2017  
Yakima, Washington

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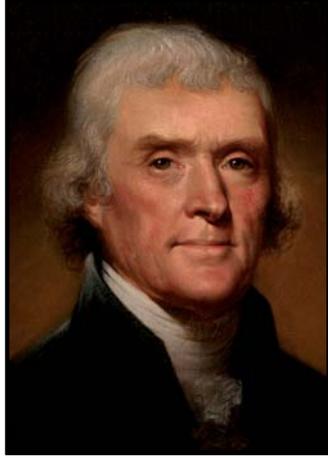


## Program Outline

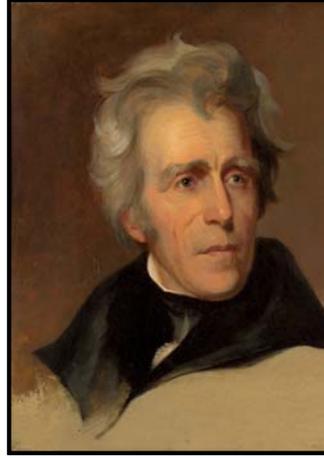
- Introduction
  - Basics
  - OPMA and PRA
  - Hearings

# INTRODUCTION

## Background

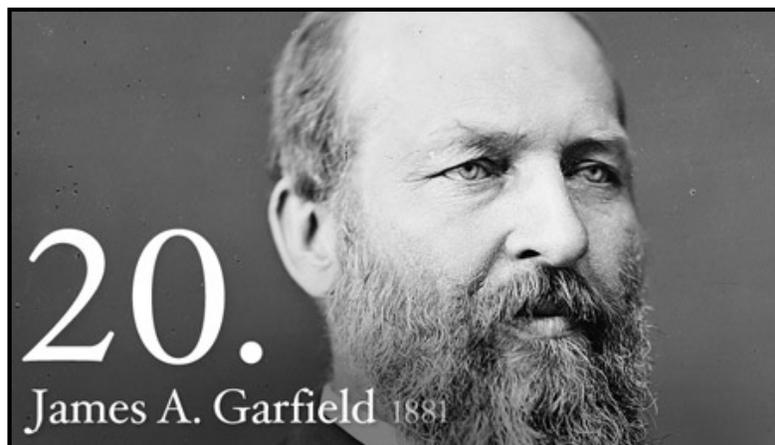


Jefferson  
(1801-1809)



Jackson  
(1829-1837)

## Background



## Background

### **Pendleton Act —**

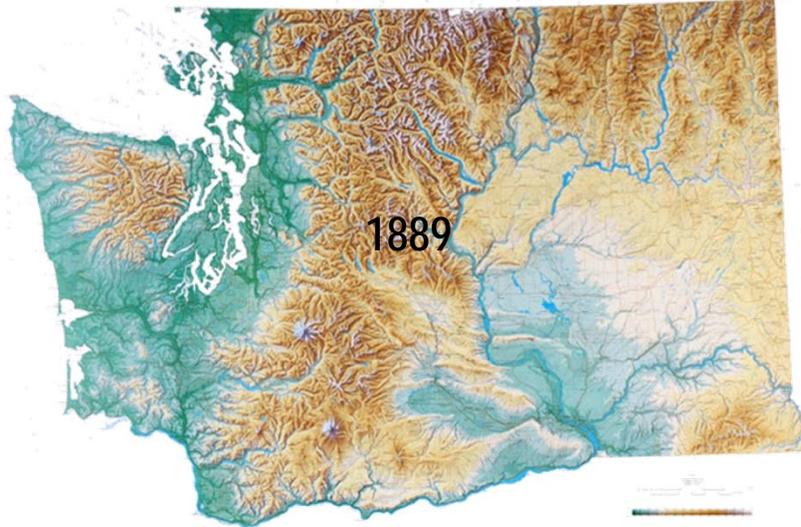
### **Civil Service Reform Act of 1883**

## Background



### **Civil Service Reform Act of 1978**

## Progressive Era



## Systems



## Systems



Ch 41.08 RCW  
(1935)

## Systems



Ch 41.12 RCW  
(1937)

## Systems



Ch. 41.14 RCW  
(1-23, 1958)

## Systems



Other

## Basics

- Structure
- Purpose
- Coverage
- Jurisdiction
- Collective bargaining

## Structure

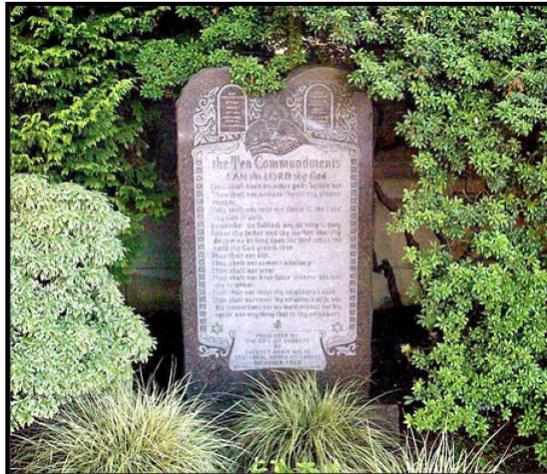


*Reynolds v. Kirkland Police Commission*

## Purpose

- Merit
- Tenure
- Independent Commission

## Vested Rights?



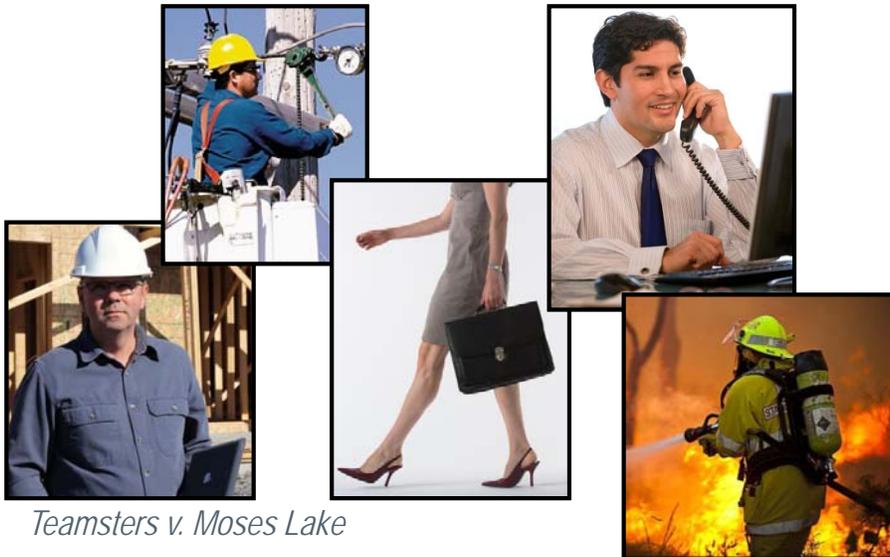
*Greig v. Metzler*

## Who Runs Department?



*Easson v. Seattle*

## Who Covered?



*Teamsters v. Moses Lake*

RCW 41.12.050

Persons Included -- Restricted Exemptions:

If the police chief is exempt, the classified civil service includes all full paid employees of the department of the city, town, or municipality, except the police chief and an additional number of positions, designated the unclassified service, determined as follows:

Department Position	Unclassified Position Appointments
6 through 10	2
11 through 20	3
21 through 50	4
51 through 100	5
101 through 250	6
251 through 500	8
501 and over	10

RCW 41.12.050

Persons Included -- Restricted Exemptions:

- Assistant chief
- Deputy chief
- Bureau commander, and
- Administrative assistant or administrative secretary.

RCW 41.14.070

County Classified and Unclassified Service Designated:

The classified civil service and provisions of this chapter shall include all deputy sheriffs and other employees of the office of sheriff in each county except the **county sheriff in every county and an additional number of positions, designated the unclassified service, determined as follows:**

Staff Personnel	Unclassified Position Appointments
1 through 10	2
11 through 20	3
21 through 50	4
51 through 100	5
101 through 250	6
251 through 500	8
501 and over	10

RCW 41.14.070

County Classified and Unclassified Service Designated:

- Undersheriff
- Inspector
- Chief criminal deputy
- Chief civil deputy
- Jail superintendent, and
- Administrative assistant or administrative secretary
- King County (> 500,000): unclassified positions of administrative responsibility not to exceed twenty positions

*Chapter 41.56 RCW and Collective Bargaining*



*Civil Service v. Collective Bargaining*



*Spokane v. Civil Service Commission*

## Basics

- Classification of positions
- Examinations
- Registers and eligibility
- Certification and appointment
- Probation
- Discipline and discharge

## Classifications



*State ex rel.  
Reilly v. Civil Service*

## Examinations: Written or Oral?



*Stoor v. Seattle*

## Examinations: Test Materials



*Hellend v. King County*



## Answer

- A. It is a “crime” because it violates an existing statute.
- B. It is not a “crime” because the statute is obsolete and not usually enforced.
- C. It is a “crime” because the exposure may incite others to more serious crime.
- D. It is a “crime” because the offensiveness to public opinion justifies the use of the obsolete statute.
- E. It is not a “crime” because public opinion would not support the police in taking enforcement action.

*See Helland v. King County*, 84 Wn.2d 858 (1975)

## Examinations: Follow the Rules



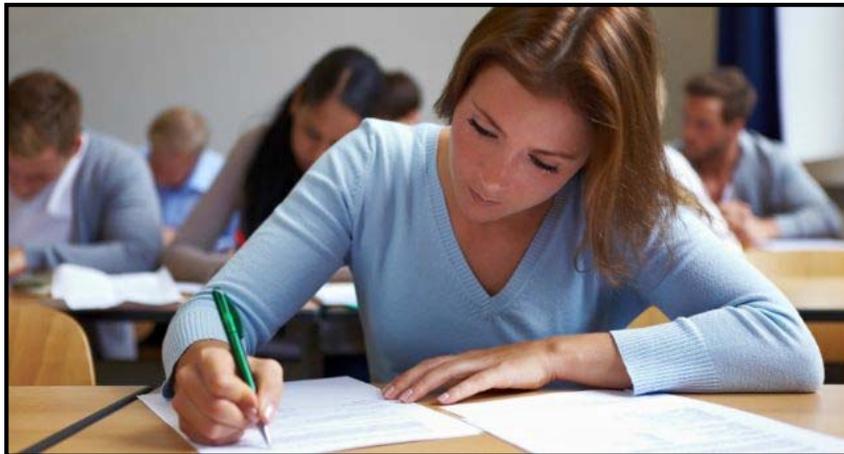
*See State ex rel. Hearty v. Mullin*, 198 Wash. 99 (1939)

## Examinations: Open or Promotional?

*O'Brien v. Civil Service Commission*



## Examinations: Who Tests?



*Simonds v. Kennewick*

## Examinations: Basics

Employment selection procedure is valid if

“Predictive of or significantly correlated with important elements of job performance.”

29 CFR § 16-7.5(B)

See, TITLE VII of the Civil Rights Act of 1964,  
42 USC § 2000-e2(a)

## Examinations: Test Sequence



*See Leonel v. American Airlines*

## Register/List: Rule of Three (Or More)?



*Seattle Police Officers Guild v. City of Seattle*

## Certification and Appointment



*See Crippen v. City of Bellevue*

## Department Screening?



## Commission Review of Registers

- Who tests?
- Who determines candidate eligibility?
- Managing appeals

## Probation



## Discharge/Discipline



## Reprimands?

- *City of Yakima* (1991)



## Resignation



*Micone v. Civil Service Commission*

## Commission Jurisdiction?



*Yakima v. Yakima Police Civil Service*

## Increased Penalties



*Pool v. City of Omak*

## Arbitration v. Civil Service



*City of Kelso*

## Cause?

**“In Good Faith For  
Cause” v. “Just  
Cause”**



*Seattle Police Dept. v. Civil Service*

## Authority to Appeal



*Pierce County v. Civil Service Commission*

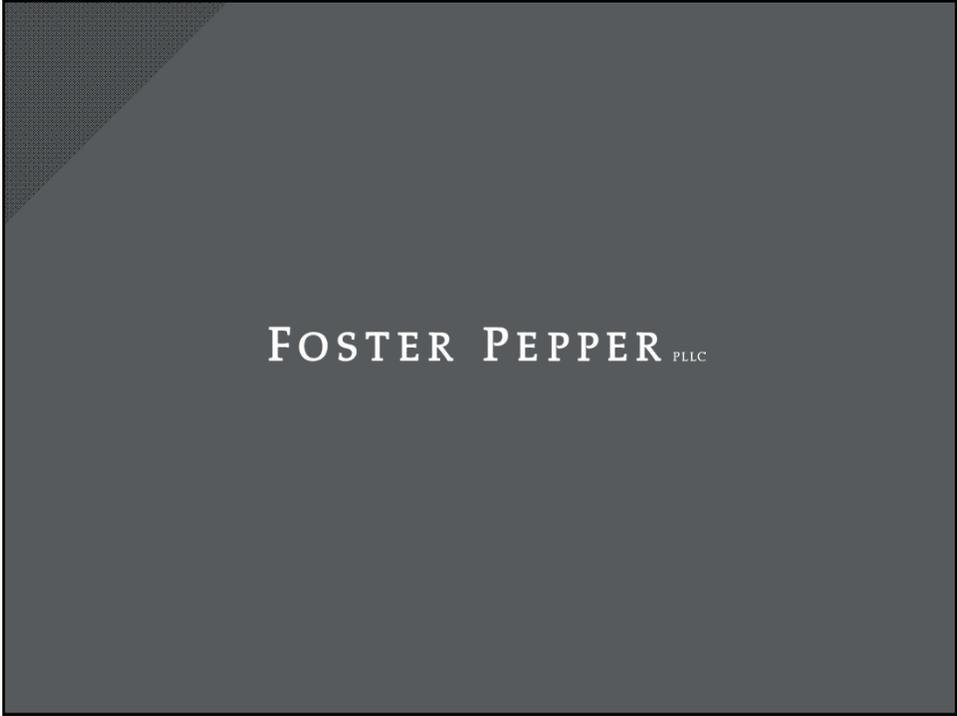
## Open Government

- Open Public Meetings Act
  - Chapter 42.30 RCW
- Public Records Act
  - Chapter 42.56 RCW

## Commission Meetings

- Legislative
- Quasi-judicial
  - Bias
  - Prejudice
  - Prejudgment
  - Appearance of fairness



The logo features a dark gray square with a thin black border. The top-left corner of the square is cut off by a diagonal line, creating a triangular section filled with a fine, light gray dot pattern. The text "FOSTER PEPPER" is centered in the square in a white, serif font, with "PLLC" in a smaller font size to the right of "PEPPER".

FOSTER PEPPER PLLC

# **Civil Service – An Introduction**

## **36<sup>th</sup> Annual Civil Service Conference**

Yakima, Washington

September 18-19, 2017

**P. Stephen DiJulio**  
**Foster Pepper PLLC**

## **CIVIL SERVICE—AN INTRODUCTION**

### **PROGRAM**

- 1. INTRODUCTION**
- 2. THE BASICS**
  - 2.1 HISTORY AND FRAMEWORK
  - 2.2 ADMINISTRATION AND OPERATIONS
  - 2.3 COLLECTIVE BARGAINING ISSUES
  - 2.4 CLASSIFICATION OF POSITIONS
  - 2.5 EXAMINATIONS
  - 2.6 REGISTERS AND ELIGIBILITY
  - 2.7 CERTIFICATION AND APPOINTMENT
  - 2.8 PROBATION
  - 2.9 DISCIPLINE AND DISCHARGE
- 3. MEETINGS, HEARINGS, AND PROCEDURES**
  - 3.1 OPEN MEETINGS ACT
  - 3.2 PUBLIC DISCLOSURE
  - 3.3 APPEARANCE OF FAIRNESS DOCTRINE
  - 3.4 CONDUCT OF A DISCIPLINARY HEARING

#### **ATTACHMENTS:**

- Civil Service—A CHRONOLOGY

# **CIVIL SERVICE**

## **A CHRONOLOGY Washington Law and Practice**

**P. STEPHEN DiJULIO  
Foster Pepper PLLC  
Seattle, Washington**

**September 2017**

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**FOSTER PEPPER** PLLC  
ATTORNEYS AT LAW

- 1883 Pendleton Act – Federal Civil Service
- 1889 State of Washington Incorporation
- 1896 Seattle City Charter
- 1903 Easson v. Seattle,  
32 Wash. 405, 73 Pac. 496 (1903)
- 1906 Ryan v. Handley,  
43 Wash. 232, 86 Pac. 398 (1906)
- 1914 Clayton Antitrust Act  
as amended, 15 U.S.C. § § 12-27
- 1919 Labor Unions Legalized  
Chapter 185, Laws of 1919, and  
RCW 49.36.010-49.36.030
- 1926 Railway Labor Act  
as amended, 45 U.S.C. §§ 151-188
- 1932 Norris-LaGuardia Act  
as amended, 29, U. S. C. § § 101-115
- 1933 Injunctions in Labor disputes  
Chapter 7, Laws of 1933, Ex. Sess., and  
Chapter 49.32 RCW
- 1935 National Labor Relations Act  
as amended, 29 U.S.C. § § 151-169
- Civil Service for City Firemen  
Chapter 31, Laws of 1935, and  
Chapter 41.08 RCW
- 1937 Civil Service for City Policemen  
Chapter 13, Laws of 1937, and  
Chapter 41.12 RCW
- 1939 State ex. rel. Hearty v. Mullin,  
198 Wash. 99, 87 P.2d 280
- 1940 Isham v. Spokane,  
2 Wn.2d 392, 98 P.2d 306 (1940)

- 1941 State ex rel Reilly v. Civil Serv. Comm.,  
8 Wn.2d 498, 112 P.2d 987 (1941)
- 1947 Labor Management Relations Act  
as amended, 29 U.S.C. § § 141, et seq.
- 1954 Stoor v. Seattle,  
44 Wn.2d 405, 267 P.2d 902 (1954)
- 1958 Civil Service for County Sheriffs  
Initiative Measure No. 23, and  
Chapter 41.14 RCW
- 1959 Labor Management Reporting and Disclosure Act  
29 U.S.C. § § 401-531
- 1960 State Civil Service  
Initiative Measure No. 207, and  
Chapter 41.06 RCW
- 1963 Reynolds v. Kirkland Police Comm.,  
62 Wn.2d 720, 384 P.2d 819 (1963)
- 1967 Public Employees Collective Bargaining Act  
Chapter 108, Laws of 1967, Ex. Sess., and  
Chapter 41.56 RCW
- 1973 Interest Arbitration  
Chapter 131, Laws of 1973, and  
RCW 41.56.430-41.56.490
- 1976 PERC Created  
Chapter 5, Laws of 1975-1976, 2nd Ex. Sess., and  
Chapter 41.58 RCW
- 1977 Arbogast v. Westport,  
18 Wn. App. 4, 567 P.2d 244 (1977)
- 1976- Bellingham Fire Fighters v. Bellingham,  
15 Wn. App. 662, 551 P.2d 142 (1976)
- 1978 Firefighters v. Walla Walla,  
90 Wn.2d 828, 586 P.2d 479 (1978)

- 1978 State Employees v. Community College,  
90 Wn.2d 698, 585 P.2d 474 (1978)
- 1979 Deputy Sheriff's Guild v. Comm'rs,  
92 Wn.2d 844, 601 P.2d 943 (1979)
- 1980 Seattle v. Auto Sheet Metal Workers, Local 387,  
27 Wn. App. 669, 620 P.2d 119 (1980)
- City of Bellevue,  
Decision No. 839 (PECB, 1980)
- 1981 Yakima v. Yakima Police,  
29 Wn. App. 756, 631 P.2d 400 (1981)
- 1982 Greig v. Metzler,  
33 Wn. App. 223, 653 P.2d 1346 (1982)
- 1983 Pierce County v. Civil Service Commission,  
98 Wn.2d 690, 658 P.2d 648 (1983)
- Keeton v. Social & Health Servs.,  
34 Wn. App. 353, 661 P.2d 982 (1983)
- 1984 State Employees v. State,  
101 Wn.2d 536, 682 P.2d 869 (1984)
- Pool v. Omak,  
36 Wn. App. 844, 678 P.2d 343 (1984)
- 1985 Simonds v. Kennewick,  
41 Wn. App. 851, 706 P.2d 1080 (1985)
- Cleveland Board of Education v. Loudermill,  
470 U.S. 532, 84 L.Ed.2d 494, 105 S.Ct. 1487 (1985)
- City of Wenatchee,  
Decision No. 2216 (PECB, 1985)
- 1986 Rose v. Erickson,  
106 Wn.2d 420, 721 P.2d 969 (1986)
- Micone v. Town of Steilacoom Civil Serv. Comm.,  
44 Wn. App. 636, 722 P.2d 1369 (1986)

- Roberts v. Fire Protection Dist.,  
44 Wn. App. 744, 723 P.2d 488 (1986)
- 1987 Shoemaker v. City of Bremerton,  
109 Wn.2d 504, 745 P.2d 858 (1987)
- 1988 Samuels v. Lake Stevens,  
50 Wn. App. 475, 749 P.2d 187 (1988)
- 1991 Crippen v. Bellevue,  
61 Wn. App. 251, 810 P.2d 50 (1991)
- Yakima v. Yakima Firefighters,  
117 Wn.2d 655, 818 P.2d 1076 (1991)
- 1992 Pasco v. PERC,  
119 Wn.2d 504, 833 P.2d 381 (1992)
- 1993 Teamsters v. Moses Lake,  
70 Wn. App. 404, 853 P.2d 951 (1993)
- Dawson v. Daly,  
120 Wn.2d 782, 845 P.2d 995 (1993)
- 1994 Matson v. Civil Service Board [Tacoma],  
75 Wn. App. 370 (1994)
- 1997 Amren v. Kalama,  
131 Wn.2d 25, 929 P.2d 389 (1997), and
- Limstrom v. Ladenburg,  
85 Wn. App. 524, 933 P.2d 1055 (1997)
- 1998 Civil Service Comm'n v. City of Kelso,  
137 Wn. 2d 166, 969 P.2d 474 (1998)
- 1999 Bunko v. Puyallup Civil Service Comm'n, 95 Wn. App. 495, 975 P.2d 1055 (1999)
- Civil Service Commission [City of Kelso] v. City of Kelso, 137 Wn.2d 166 (1999)
- Americans with Disabilities Act (“ADA”),  
42 USC §12101, et seq.

- 2001 Bickford v. City of Seattle,  
104 Wn. App. 809, 17 P.3d 1240 (Wash. App. Div.1 2001);  
review denied, 144 Wn. 2d 1019, 32 P.3d 284 (2001)
- 2002 Chapter 143, Laws of 2002 Amends RCW 41.12.050 (unclassified positions)
- 2004 Seattle Police Officers Guild v. City of Seattle,  
151 Wn. 2d 823, 92 P.3d 243 (2004).
- 2005 Leonel v. American Airlines,  
400 F.3d 702 (9th Cir. 2005)
- 2006 Yakima County Law Enforcement Officers Guild v. Yakima County,  
133 Wn. App. 281, 135 P.3d 558 (2006)
- 2010 City of Seattle Police Dept. v. City of Seattle Public Safety Civil Service Comm'n.,  
155 Wn. App. 878 (2010)
- 2010 Skinner v. City of Medina, 168 Wn.2d 845 (2010)
- 2011 City of Seattle v. Werner, 163 Wn. App.899, 261 P.3d 218 (2011)
- 2014 City of Medina v. Skinner, 184 Wn. App. 449, 336 P.3d 1172 (2014)
- 2015 Goding v. King County, 192 Wn. App. 270, 366 P.3d 1 (2015)
- 2016 McGowan v. City of Asotin, 193 Wn. App. 1052 (2016, unpublished)
- 2017 AGO 2017 No. 3 (March 20, 2017)

# P. Stephen DiJulio

MEMBER



## SEATTLE

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## SERVICES

Municipal Government  
Construction  
Employment & Labor  
Environmental & Natural Resources  
Environmental Litigation  
Infrastructure  
Land Use, Planning & Zoning  
Litigation & Dispute Resolution  
Ports  
Real Estate  
Right-of-Way (Chair)  
School Districts  
Sports Law  
Transportation  
Wine, Beer & Spirits

## PRACTICE OVERVIEW

Steve's practice focuses on litigation involving state and local governments; civil service and public employment; and, land use and environmental law. His particular experience includes representation of jurisdictions on eminent domain, utilities (water, wastewater, storm water, solid waste systems), local improvement districts, facility siting and contractor litigation.

Steve serves as Chair of the firm's Executive Committee and in that capacity as the Managing Member (or "Managing Partner") of the firm.

## SELECTED REPRESENTATIVE WORK

- *Brower v. State/Football Northwest*, 137 Wn.2d 44 (1998) (Successful defense of Seattle Seahawk stadium project and legislative referendum)
- *Washington Securities v. Horse Heaven Heights*, 132 Wn. App. 188, 149 P.3d 379 (2006), rev. denied, 158 Wn. 2d 1023 (successful prosecution of quiet title action for rail right of way)
- *Central Puget Sound Regional Transit Authority v. Miller*, 156 Wn.2d 403 (2006) (successful defense of Sound Transit eminent domain action)
- *City of Port Angeles v. Our Water-Our Choice*, 145 Wn. App. 869, 188 P.3d 533 (2008); 170 Wn.2d 1, 239 P.3d 589 (2010) (successful defense of water fluoridation program)
- *HTK v. Seattle Popular Monorail*, 155 Wn.2d 612 (2005) (successful defense of municipal condemnation authority)
- *Public Utility District No. 1 of Okanogan County v. State of Washington, Peter Goldmark*, 174 Wn. App 793, 301 P.3d 472 (2013); 182 Wn.2d 519; 342 P.3d 308 (2015) (successful prosecution of utility corridor acquisition)
- *Servais v. Port of Bellingham*, 127 Wn.2d 820 (1995) (amicus for Washington Public Ports Association in defense of protected public records)
- *Klickitat Citizens v. Klickitat County*, 122 Wn.2d 619 (1993) (Defense of comprehensive plan and environmental impact statement for regional landfill)
- *Rabanco v. King County*, 125 Wn. App. 794 (2005) (successful defense of county solid waste management authority)

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- *Wong, et al. v. City of Long Beach*, 119 Wn. App. (2004) rev. denied 152 Wn.2d 1015 (2004) (successful defense of city trail project)
- *Washington Waste Systems, Inc. v. Clark County*, 115 Wn.2d 74 (1990) (Defense of multi-million dollar government contract procurement)
- *Grant County Fire District No. 5 v. Moses Lake*, Supreme Court, 150 Wn.2d 791 (2004) (Court reconsiders and unanimously reverses earlier ruling; affirms city annexation authority)
- *Babcock v. Mason County Fire Dist. No. 6*, 144 Wn.2d 774 (2001) (amicus for Fire Commissioners Association regarding public duty doctrine)
- *City of Seattle v. Shepherd*, 93 Wn.2d 861, 613 P.2d 1158 (1980) (upholding crime victims' rights to recovery of stolen property)

## RECOGNITION

- *The Best Lawyers in America*® Appellate Practice, 2012-2018
- Best in the Business: Leading Lawyers in the Puget Sound Region, *Seattle Business* magazine, Appellate Practice, 2013
- Washington Super Lawyers list, 2002-2017
- 2010 Top Lawyer, *Seattle Metropolitan* magazine
- Martindale-Hubbell AV rating

## ACTIVITIES

- Municipal League, Board of Trustees, 2010-2013
- Washington State Association of Municipal Attorneys
- International Municipal Lawyers Association
- American Bar Association, State and Local Government Law and Employment Law Sections, Member
- Washington State Bar Association
  - + Environmental and Land Use Law and Administrative Law Sections, Member
- King County Bar Association, Trustee, 1986-1989
- South King County Bar Association, Trustee, 1986-1988
- South King County Legal Clinic
  - + Founder and Attorney Coordinator, 1985-1986
  - + Volunteer, 1978-1989
- University of Washington
  - + Lecturer, Evans Graduate School of Public Affairs

## QUOTED

- "[Breaking Down Freedom of Information Laws](#)," The Willis Report, FOX Business News, July 2010

## SELECTED PUBLICATIONS

- Foster Pepper [Local Open Government](#) Blog
  - + Steve DiJulio is a contributor to Foster Pepper's Local Open Government Blog.
- Washington Real Property Deskbook: Causes of Action, Taxation, Regulation, Chapter Editor (WSBA)
- Washington Public Records Act Deskbook, Chapter 14, Attorney Client Privilege, Co-Author (WSBA)

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- Washington Administrative Law Handbook, Chapter 14, Judicial Review of Administrative Proceedings, Author (Butterworth)
- [“Washington Supreme Court Levels the Playing Field in Real Estate and Land Use Litigation,”](#) Co-author, Foster Pepper News Alert, June 2015
- [“U.S. Supreme Court Decision Expands Scope of Takings Clause,”](#) Co-author, Foster Pepper News Alert, June 2013
- “A Blessing on Your Meeting?” Co-Author, MRSC In Focus: Council/Commission Advisor, April 2012
- [“Giving for the City: Constitutional Limits on Municipal Economic Development Programs,”](#) Cityvision Magazine, March/April 2012
- “Council Meeting Conduct and Citizen Rights under the First Amendment,” Author, Municipal Research and Services Center of Washington, November 2009

## EXPERIENCE

- Foster Pepper PLLC
  - + Chair, Executive Committee, 2017-Present
  - + Member, 1990-Present
  - + Associate, 1986-1990
- City of Kent, City Attorney, 1982-1986
- City of Seattle, Assistant City Attorney, 1977-1982

## BAR ADMISSIONS

- Washington, 1976
- U.S. District Court
  - + Eastern Division of Washington, 1993
  - + Western Division of Washington, 1976
- 9th Circuit U.S. Court of Appeals, 1980
- Supreme Court, State of Washington, 1976

## EDUCATION

- J.D., Seattle University, 1976
- B.A., University of Washington (Oval Club Scholastic Honorary), 1973