

AGENDA

*Port of Kennewick
Special Commission Business Meeting
Tri-Cities Business & Visitor Center
Bechtel Board Room
7130 W. Grandridge Boulevard
Kennewick, Washington*

Tuesday, August 27, 2019
2:00 p.m.

- I. CALL TO ORDER**
- II. PLEDGE OF ALLEGIANCE**
- III. APPROVAL OF AGENDA**
- IV. PUBLIC COMMENT** *(Please state your name and address for the public record)*
- V. CONSENT AGENDA**
 - A. Approval of Direct Deposit and ePayments Dated August 19, 2019
 - B. Approval of Warrant Register Dated August 27, 2019
 - C. Approval of Special Commission Business Meeting Minutes August 13, 2019
- VI. NEW BUSINESS**
 - A. Dave Mitcham, Cedars Lease Agreement (**AMBER**)
- VII. OLD BUSINESS**
 - A. Citizen Complaint (**LUCY**)
 - 1. Selection of Neutral; Resolution 2019-17
 - 2. Sanctions for Commissioner Moak; Resolution 2019-18
- VIII. REPORTS, COMMENTS AND DISCUSSION ITEMS**
 - A. West Richland Offer Update (**AMBER/ LUCY**)
 - B. Commissioner Meetings (formal and informal meetings with groups or individuals)
 - C. Non-Scheduled Items
- IX. PUBLIC COMMENT** *(Please state your name and address for the public record)*
- X. ADJOURNMENT**

PLEASE SILENCE CELL PHONES



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Commission President Thomas Moak called the Special Commission Meeting to order at 2:00 p.m. in the Bechtel Board Room located at 7130 West Grandridge Boulevard, Kennewick, Washington 99336.

The following were present:

Board Members: Thomas Moak, President
Don Barnes, Vice-President
Skip Novakovich, Secretary

Staff Members: Tim Arntzen, Chief Executive Officer
Tana Bader Inglima, Deputy Chief Executive Officer
Amber Hanchette, Director of Real Estate and Operations
Nick Kooiker, Chief Financial Officer
Larry Peterson, Director of Planning and Development
Lisa Schumacher, Special Projects Coordinator
Bridgette Scott, Executive Assistant
Lucinda Luke, Port Counsel

PLEDGE OF ALLEGIANCE

Commissioner Barnes led the Pledge of Allegiance.

APPROVAL OF THE AGENDA

MOTION: Commissioner Novakovich moved to approve the Agenda as presented; Commissioner Barnes seconded. With no further discussion, motion carried unanimously. All in favor 3:0.

PUBLIC COMMENT

No comments were made.

CONSENT AGENDA

- A. Approval of Direct Deposit and E-Payments Dated August 2, 2019**
Direct Deposit and E-Payments totaling \$80,678.49
- B. Approval of Warrant Register Dated August 13, 2019**
Expense Fund Voucher Number 101296 through 101347 for a grand total of \$902,363.98
- C. Approval of Regular Commission Business Meeting Minutes July 9, 2019**
- D. Approval of Special Commission Business Meeting Minutes July 30, 2019**

MOTION: Commissioner Barnes moved for approval of the Consent Agenda as presented; Commissioner Novakovich seconded. With no further discussion, motion carried unanimously. All in favor 3:0.

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REPORTS, COMMENTS AND DISCUSSION ITEMS

A. *Vista Field Update*

Mr. Peterson presented photos of the progress of the construction at Vista Field over the past several months. Construction is on schedule and slated for completion in January 2020.

Discussion ensued regarding construction progress at Vista Field.

1. *City of Kennewick Proposed Amendment to the Comprehensive Plan Comments*

Mr. Peterson stated the City of Kennewick has requested comments from the Port of Kennewick, for the City's proposed amendments to their Comprehensive Plan. The City Planning Commission will be holding a public hearing to amend the Comp Plan to change the zoning designation around the Kennewick Public Facilities District properties, areas south of Grandridge Boulevard, and around Vista Field from Commercial to Urban Mixed Use (UMU). The letter that would support the designation of the UMU zoning, which lends to the city center idea that was envisioned in the Port's Vista Field Master Plan. Mr. Peterson stated the letter might also include comments regarding the work the Port compiled for the transportation and utility impacts, and land use considerations prior to the development agreement, which identified traffic mitigation and specific fixes and triggers on particular intersections; and ask the City to analyze the impacts to Vista Field and the overall neighborhood.

Mr. Arntzen spoke with Marie Mosley, City of Kennewick City Manager regarding the draft letter for review, but has yet to receive her comments. Should the Commission authorize staff to send a letter in support of the zoning changes, it would be prudent if the letter was well received by the City Manager. Mr. Arntzen would like to draft a letter with Ms. Mosley which supports the UMU zoning, but also outlines some terms regarding mitigation. Mr. Arntzen inquired if the Commission is agreeable to staff drafting a letter in conjunction with the City Manager which offers support of the UMU zoning and outlines points raised by Mr. Peterson.

Commissioner Novakovich stated drafting a letter is well within Mr. Arntzen's delegation of authority to work with the City Manager and send forward to the City Planning Commission. Commissioner Novakovich is in favor of Mr. Arntzen drafting a letter with the assistance of Ms. Mosley.

Commissioner Barnes stated the Port has a working relationship with the City, and without knowing the specific language of the letter, he trusts Mr. Arntzen to work with Ms. Mosley to address any issues.

Commissioner Moak believes UMU zoning is important and it will play into creating the density and nexus that makes Vista Field a soundly viable economic project. Commissioner Moak thinks that the future work by the City and Port will be helped by the change in zoning. Commissioner Moak trusts that Mr. Arntzen and Ms. Mosley will work together to come up with something very useful. Commissioner Moak emphasized that the Commission believes

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this is a sound change and the Port did a lot of work to move Vista Field forward and it is important that the City is nicely reminded of the work.

Mr. Arntzen reiterated that the Commission authorizes staff to draft a letter that is well received by Ms. Mosley and highlights the Port's previous analysis at Vista Field. Mr. Arntzen stated that if staff cannot reach an agreement with the City, the letter will not be sent.

Commissioner Moak stated that is reflective of the Commission's interest.

B. Columbia Drive Update

Mr. Peterson presented photos from the construction progress at Columbia Gardens Wine Tasting Building.

Discussion ensued regarding progress at Columbia Gardens.

C. Southridge Update

1. Auction Services Request for Proposals

Ms. Hanchette stated Resolution 2019-15 relates to Port property in the Southridge area. The 8.5 acres of property is located across from Southridge High and has been for sale since March 2017. The Southridge parcels have been consistently advertised through a variety of marketing channels, including LOOPNET, Zoom Prospector, and direct mailings to real estate brokers, contractors, and land developers. A potential idea to sell the property was to utilize an auction house to accelerate the sales process and use those funds for high priority Port projects. Commission directed staff to explore Requests for Proposals for auction services, which was advertised in July on the Port website and in the *Tri-City Herald*. The Port received interest from four auction services and a number of questions were answered through an addendum. The Port received two proposals; Govdeals.com, a website company submitted a two-page marketing flyer, which was disqualified; and Musser Bros. Auctions. Previously, Musser Bros. made two presentations to the Port Commission on their services and offered that a number of local government entities, such as Kennewick Irrigation District and Department of Natural Resources have utilized their services. Musser Bros. utilizes a trademark power parcel marketing system, which is an advanced marketing program that increases interest and awareness of the property. The proposal would include a marketing plan that would be a mutually agreed upon price by the Port and vendor prior to the auction process. Musser Bros. did not estimate a price for their proposal and they do not have a requirement for guaranteed commission. The price determined would be subject to Commission approval and Musser Bros. provides a sixty day timeline, if the Commission moves forward with their proposal. Ms. Hanchette reviewed the proposal and did not find anything concerning and is happy to answer any questions.

Commissioner Moak inquired if any local, regional firms approached the Port.

Ms. Hanchette stated a Spokane firm inquired about the RFP; however they sent a letter saying they would not be able to submit a proposal.

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Commissioner Barnes inquired if the Commission discussed the upfront marketing costs at a previous meeting.

Ms. Hanchette believes the Commission and staff discussed the up-front costs previously and the costs were estimated to be \$20,000-\$30,000 for the marketing program.

Commissioner Moak stated his recollection was around \$25,000.

Commissioner Barnes inquired if the parcels have been marketed for \$7.00/per square foot since 2017.

Ms. Hanchette stated that is correct.

Commissioner Barnes asked if staff considered reducing the asking price. Commissioner Barnes confirmed that the appraisal was completed in January 2017 for one single parcel at \$3.50/per square foot or for the individual lots, \$7.00/per square foot and based on the appraisal, the Port was marketing the property at \$7.00/per square foot.

Ms. Hanchette stated that is correct and indicated that the surrounding comparables to the Port's property, in 2017 were approximately \$10-12.00 per square foot. The Port was already at the lower end surrounding that piece. The Port has not reduced the price and stated of the two appraisals that were conducted, once indicated that the lower price was for a single user, such as a big box store, that would purchase the entire 8.5 acres. The higher end of the assessed price is if the parcels were sold individually.

Commissioner Novakovich confirmed that Ms. Hanchette is a licensed Realtor and asked, in her professional opinion, if she has done everything possible to market the property that she can think of and concluding that an auction would be in the best interest of the Port.

Ms. Hanchette is a licensed Realtor and stated the property was not listed on the Multiple Listing Service (MLS), because the Port would need to use a broker and list with an agency. Outside of the MLS, Ms. Hanchette used Loopnet, which is a highly recognized internet service that brokers utilize. Ms. Hanchette stated there was an exhaustive marketing effort outside of the MLS.

Commissioner Novakovich believes Ms. Hanchette has done a great job marketing the property and believes the Port has reached a point where we need to look at something else to be able to diversify.

Commissioner Barnes asked, in Ms. Hanchette's professional opinion as a real estate agent/broker, if the auction alternative were not available, would it make sense to look at a price reduction. Commissioner Barnes stated there is no question of the exposure of the property; however, he believes the market is sending a message regarding the price.

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Ms. Hanchette stated there are completely different views to take. The auction process is different from traditional marketing of the property and creates a different sense of urgency. The traditional method is working leads, whereas the auction process is different, in that it identifies what the market will bear today. Ms. Hanchette deferred back to the Commission if they would like to proceed with the auction process or reduce the price of the property and stated each option has value in different ways.

Mr. Arntzen stated the Commission and staff have been discussing the auction process over several meetings and the Commission had instructed the CEO and staff to ready the property for auction.

MOTION: Commissioner Novakovich moved to approve Resolution 2019-15, accepting the proposal for auction services of Port owned land parcels in the Southridge Kennewick portion of the Port District; and further ratify and approve all action by Port officers and employees in furtherance hereof; Commissioner Moak seconded.

PUBLIC COMMENT

Bill McKay inquired how the Port obtained ownership of the property and what did they pay for it.

Mr. Peterson stated the Port purchased 180 acres from the Department of Natural Resources in 1994 and believes the property was \$.11 cents per square foot.

No further comments were made.

Discussion:

Commissioner Moak stated Mr. Musser made two presentations to the Commission and explained the auction process, and provided a very strong application and portfolio. The property has been for sale for several years, and Commissioner Moak stated looking at a different way of marketing this property and using the process Musser Bros., who has successfully auctioned off other properties, is worth the gamble. The Commission has discussed the auction process at length and it is not a guarantee. Commissioner Moak believes this is a good proposal and it is time to move forward with Southridge and make it happen.

Commissioner Barnes expressed his concerns about the upfront cost and eventual outcome. Commissioner Barnes stated there is no way to know in advance what the outcome will be with this process. Ms. Hanchette has done an excellent job exposing the property to the market, there is no question of the market's awareness of this property. Commissioner Barnes stated the conventional way might be to reduce price and see what happens; however the auction process is more expedient to perhaps the same outcome. Commissioner Barnes does not believe the Port has ever auction property before and maybe we can try it and hopefully we get a lot of interest, enthusiasm, and a positive outcome for the Port.

With no further discussion, motion carried unanimously. All in favor 3:0.

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D. City of West Richland Update

Ms. Hanchette updated the Commission on the City of West Richland's offer for the former racetrack property. The City offered to purchase the former racetrack, which is approximately 93 acres in West Richland to construct a new police station, as well as market some of the economic development ideas that the Port put into the Master Plan, and a public recreation area. At the last meeting, Commission directed staff to continue working with City staff to address a number of items in the offer. Ms. Hanchette has worked very closely with Mayor Gerry and City staff. There were a number of items and contingencies that needed to be addressed, such as price, source of funds, and water rights. Staff provided Mayor Gerry with the requested documents which includes: title, surveys, and easements for City review. Ms. Hanchette continues negotiations with the City and will be meeting with Benton County staff to discuss the City's potential source of Rural Capital County Funds to purchase the property. Ms. Hanchette continues to address the contingencies and working with the Ms. Luke and Mr. Arntzen on the offer or Purchase and Sale Agreement (PSA).

Commissioner Novakovich thanked Ms. Hanchette for the update.

Commissioner Moak stated one of the concerns that came up was the question of water rights and working with the Department of Ecology. Commissioner Moak inquired if staff broached the application process with the Department of Ecology.

Ms. Hanchette stated the City understands the net value of the water rights, and whatever is remaining from the water transfer would be part of the PSA transaction. Ms. Hanchette stated Mr. Peterson has been working with Ben Floyd of White Bluffs Consulting on the application and asked him to update the Commission.

Mr. Peterson stated Mr. Floyd has been working closely with the Department of Ecology on the various scenarios regarding the transfer of water rights to Benton County fairgrounds. The PSA will address the potential transfer and what would happen if Department of Ecology took all of the water rights. The general principal of water rights is use it or lose it; however the Port has continued to use the water rights on the former racetrack. Mr. Peterson stated the PSA is being drafted to address the numerous scenarios with those water rights.

Commissioner Novakovich inquired if there will be enough water rights to transfer to Vista Field.

Mr. Peterson stated there is enough water rights to accommodate the Benton County fairgrounds, and Vista Field in addition to a significant surplus for the former raceway. If the City developed the former raceway per the Port's Master Plan, there would be a surplus in water.

E. Executive Training Update

Mr. Arntzen stated one of his objectives set by the Commission, is to attend an executive training course. Mr. Arntzen is considering two options: an executive training course at Boise State University or a course administered by Jim Darling of Maul Foster Alongi, former executive director of the Port of Bellingham. Mr. Darling's proposed course will include 3-5 port CEO's and address topics of importance to ports. The course will be held a day and a half prior to Washington Public Port Association (WPPA) Small Ports Conference. The CEO's would travel

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to Leavenworth early to attend Mr. Darling's training and then attend the Small Port's Conference. Mr. Arntzen is waiting for the final details and will report back as to which training he will pursue.

F. Appointment of CEO Evaluation Committee Members

Ms. Luke stated before the Commission is Resolution 2019-16 which address the CEO Evaluation Committee – Commissioner Appointment. The first meeting for the performance evaluation committee is set to occur before September 15, 2019 and before the Commission is a Resolution appointing a new committee member. The CEO Performance Evaluation was updated in 2017 to make it more efficient and effective and consistent with current management trends. The updated evaluation process provides for the formation of a committee which includes the Port Attorney (Ms. Luke), the Port's Chief Financial Officer (Mr. Kooiker), and one Commissioner, who serves a two year term. Commissioner Barnes was appointed in 2017 to the CEO Evaluation Committee and pursuant to the Port Commission Rule 15.1.1, the Commission is due to appoint another Commissioner to the committee. Ms. Luke stated after careful review of various matters pending before the Port Commission and the potential liability issues that could arise from the recently completed citizen complaint investigation, Ms. Luke recommends that Commissioner Skip Novakovich be appointed to the CEO Evaluation Committee for the next two years of CEO evaluations.

Mr. Kooiker stated as Ms. Luke mentioned the policy states the committee meets before September 15, 2019 in order to meet the final deadline of December 15, 2019 for Commission approval. Between September and December the committee will be deliberating and bring a recommendation to the Commission for final approval.

Commissioner Barnes stated Ms. Luke referenced Commission Rule 15.1.1 and believes the Commission Rules of Policy and Procedure are included later in the packet; however, he was not able to find 15.1.1.

Ms. Luke stated there is an update to the Commission Rules that includes 15.1.1. Ms. Luke did not include that rule in the Agenda Packet; however, she can provide a copy and assures Commissioner Barnes that it is in the Rules.

Commissioner Barnes stated Resolution 2017-27 was passed, which updated the procedures. Commissioner Barnes passed out copies of Resolution 2017-27 and noted that the update included several revisions; it revised paragraph 6 – evaluation, and amended it as Ms. Luke mentioned; however, it also included a proviso that the annual evaluation process will revert to the original paragraph 6 language and use of the exhibit D format at such time as the Port Commission determines to discontinue using the CEO Evaluation Committee Process. Commissioner Barnes stated Ms. Luke noted in her Agenda Report “after careful review of various matters pending before the Port Commission and the potential liability issues that could arise from the recently completed citizen complaint investigation,” and Commissioner Barnes inquired if the Port Commission would like to consider, because it was provided as a possibility in 2017 under Resolution 2017-27, reverting back to the original process.

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Ms. Luke stated as noted in her Agenda Report, our intent at the time in 2017 was to bring this process into the future, rather than revert back. Ms. Luke would recommend against reverting back to the old process due to that fact.

Commissioner Moak asked what the previous process consisted of.

Ms. Luke stated it was quite cumbersome, where each one of the Commissioners filled out a fairly lengthy evaluation form. Those forms were then combined into one evaluation form, which was fairly lengthy and was typically more than ten pages. The form itself is fairly old and Ms. Luke has not seen the form used in a number of years in the evaluation process. Ms. Luke stated it was a cumbersome process and each Commissioner participated in it and found it to be cumbersome, just because it necessitated each Commissioner filling out a very lengthy form and then having Ms. Luke combine the form into one evaluation.

Commissioner Barnes stated one of the benefits of being a Port of Kennewick Commissioner is that we are able to attend WPPA conferences, and we are able to interact with other port commissioners and share our experiences, ask questions about problems, and what commissioners may encounter and how does your port handle this. Commissioner Barnes has had occasion to speak to some individuals that have attended port conferences regarding the way that they evaluate their Executive Director/CEO/Manager. It is a range, but some of the feedback he received, one question from a very well respected attorney actually said, "why would you ever delegate the evaluation of your CEO, it is one of your primary responsibilities as a Commissioner." So again, Commissioner Barnes agrees the old process was lengthy and cumbersome, there was a lot of work that went into it, required by each Commissioner. Commissioner Barnes imagines that if the Commission wanted to revert back to three Commissioners performing the evaluation of our CEO, perhaps we could fine tune it and adjust it. Right now, the evaluation is three individuals evaluating our CEO and then it eventually comes to us for the formal approval, based on committee recommendation, as he understands it. Commissioner Barnes stated there is a lot going on, as Ms. Luke mentioned, here at the Port of Kennewick, but one thing he wanted to lay on the table, for consideration with his fellow Commissioners, was whether or not, as provided back in 2017, whether or not we want to revert back to a process where its three individual Commissioners evaluating of our CEO.

Commissioner Novakovich understands where Commissioner Barnes is coming from, that it probably is the Commission's responsibility, but also, he believes that staff and possibly our legal counsel work with our CEO a lot more than Commissioners do and have a lot more firsthand knowledge of how the CEO behaves, how he handles matters, and what his expertise is. Commissioner Novakovich referenced a term from when he was commissioned in the Military. The Colonel that pinned his bars on him told him to listen to the sergeants on the ground, because they have been there and done that and they know what they are doing and will protect your back. Commissioner Novakovich believes this is very similar, we listen to staff because they have been there and they have interacted with the Commissioner, they have interacted with the staff and interacted with the CEO. And they probably have a lot better handle on the ability of our CEO, to handle his position than the Commission does. Commissioner Novakovich thinks having one

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Commissioner and staff person and our legal counsel makes a whole lot of sense. Commissioner Novakovich is totally in favor of the way we have been handling things.

MOTION: Commissioner Novakovich moved to approve Resolution 2019-16, appointing Commissioner Skip Novakovich for a two-year term to the CEO Evaluation Committee commencing immediately; and further ratify and approve all action by Port officers and employees in furtherance hereof; motion dies for lack of second.

Ms. Luke asked for Commission direction since the committee is tasked with meeting by September 15, 2019.

Commissioner Barnes stated Resolution 2017-27 provided for reversion back to the old process. Commissioner Barnes believes it would be possible for the old process to be fine-tuned or modernized or whatever, but again it would be the responsibility of the three Commissioners to evaluate the CEO. Commissioner Barnes is in favor of reverting back to the old process and then going to work to perhaps modify it to make it more modern, more applicable, and more appropriate.

Commissioner Novakovich brought a Point of Order, there was action before the Commission and there was not a call for Public Comment, as is our normal course.

Commissioner Moak stated since there was no motion that was seconded, there is no public comment at this point.

Ms. Luke stated the Port is required to evaluate the CEO by December 15, 2019 and staff will need to initiate a process by which we do that, so we will need to obtain direction from the Commission in order to timely complete the evaluation process.

MOTION: Commissioner Barnes moved that the CEO Annual Evaluation Process revert to the original paragraph 6 language and use of the Exhibit D format that existed prior to Resolution 2017-27; Commissioner Moak seconded.

PUBLIC COMMENT

No comments were made

Discussion:

Commissioner Novakovich stated this seems to him that this is an attempt by two Commissioners that are subject to a citizen's complaint, to overrule what seems to be a practical matter of evaluating the CEO. Commissioner Novakovich certainly hopes that isn't the case, but it is pretty obvious that seems to be what is happening.

Commissioner Moak does not think that is what is happening at all.

Commissioner Barnes agrees with Commissioner Moak and that is not what is happening at all. The Port of Kennewick Commission has the responsibility to evaluate the CEO as one of its primary responsibilities.

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Commissioner Moak stated there are certain parts of the revised CEO Evaluation that he liked and some of it went very smoothly. But, there are parts he did not like, and he does think that staff left us in a very difficult position by the recommendation. Commissioner Moak thinks we need to move forward with CEO evaluation and staff provided us with only one option.

Commissioner Novakovich stated staff provided the Commission with the continuation for what we have done for the past two years, which sets a precedent for how we behave. Commissioner Novakovich reiterated that two Commissioners that are looking to change this and evaluate the CEO are the two Commissioners who are subject to the citizen's complaint, for mistreatment of the CEO. Commissioner Novakovich thinks it is very unfair, and asked for that to be on the record and for the public to know that. Commissioner Novakovich thinks it is very unfair to have two Commissioners subject to complaint that says they mistreated our CEO be part of an evaluation committee to evaluate our CEO.

Commissioner Barnes thinks this is a very subtle change, and it does not represent, say a significant change. The process that was used for the past two years consisted of a committee making a recommendation to the Commission for the evaluation. So the Commission had the ultimate approval of the final evaluation. This just removes the committee recommendation from the evaluation. It is still the Commission that evaluates the CEO. Commissioner Barnes stated, to be fair also, there is a potential for and he is not saying there is, a conflict of interest. Commissioner Barnes thinks here, under this proposed change, to revert back to the way it was, is putting the responsibility back squarely on the table with the Port Commission, and he believes where it belongs, and where it should be.

Commissioner Novakovich stated the process that has been in place for the past two years put it squarely on the Commission, except the recommendation came from people that are more in tuned to what our CEO is doing, rather than the Commissioners that are subject to a citizen's complaint. Commissioner Novakovich reiterated that he thinks this is very unfair, and he thinks it is stacking the deck against our CEO, and does not see this as a good thing for the Port of Kennewick.

With no further discussion, motion carried. All in favor 2 (Commissioners Barnes and Moak):1 Nay (Commissioner Novakovich).

G. Commissioner Meetings (formal and informal meetings with groups or individuals)

1. Commissioner Moak attended the exit meeting with Clifton Larson Allen and the Port received a clean audit.

H. Non-Scheduled Items

1. Commissioner Moak recently met a gentleman who utilized the Port's guest moorage. The citizen stated the facilities and the staff that he interfaced with were great, and had such great customer service skills and were very nice people to work with. Commissioner Moak asked Ms. Hanchette to convey to staff who dealt with guest moorage that he was a very happy customer.

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2. Mr. Kooiker stated the Port recently had their 2018 financial statement exit conference performed by Clifton Larson Allen (CLA). CLA has been performing third party audits for the Port for the past six years and the Port received a clean audit for 2018. Mr. Kooiker stated the State Auditor's Office is set to begin their audit in September. Mr. Kooiker thanked Commissioner Moak for attending the exit interview.

Mr. Kooiker reported that the Commission Meeting Room remodel timeline has been extended, therefore the next Commission Meeting on August 27, 2019 will be held in the Bechtel Board Room.

3. Ms. Hanchette stated in regards to Commissioner Moak's comments regarding guest moorage, she recognized Kandy Yates, Port Marina Manager; however, it could have been Bridgette Scott, Lisa Schumacher, or Jennifer Roach, who may have helped him, because they all pitch in and help whenever it's needed.

NEW BUSINESS

A. *Citizen Complaint*

Ms. Luke reported on the citizen complaint, which was received by the CEO and Ms. Luke on March 25, 2019 against Commissioners Moak and Barnes. The investigation was initiated per Port Rules and the investigation has been laid out and followed pursuant to the rules as carefully as possible. The Port Commission Rules of Policy and Procedure are followed when a complaint against Commissioners is received. Section 5 of the Port Rules governs the complaint handling process. As part of that process, outside legal counsel Tara Parker of the law firm Ogden Murphy Wallace was retained to conduct the investigation. Ms. Luke noted that she did not know Ms. Parker prior to this process, nor had she dealt with Ogden Murphy Wallace Law Firm, nor had her law firm had any association with either one of them. Ms. Parker was retained her for experience investigating matters of this type and she spends a portion of her week in Olympia investigating legislative complaints. Ms. Luke outlined Ms. Parker's report:

The Investigation Process:

- The Executive Director recused himself;
- All further steps delegated to Port counsel, and/or an investigator retained for such purpose by Port counsel;
- Tara Parker was retained to conduct the investigation;
- She determined the scope of the investigation and undertook interviews of the Complainant, Respondents, and 6 witnesses;
- She also reviewed the Port Rules, relevant statutes, and other documents she determined relevant to her investigation.

Complaint and Witness Statements Raised Four Questions that were investigated:

- Did Commissioners Barnes and Moak violate the Washington Open Public Meetings Act, RCW 42.30, by privately discussing Port Business?
- Did Commissioner Barnes and/or Commissioner Moak violate Port rules and policies in their directives and communications?

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- Did Commissioner Barnes create a hostile work environment for the Port CEO in violation of Port policies and/or Washington law?
- Did Commissioner Moak breach his obligation to perform his duties as Commission President to enforce the Commissioner's policies and procedures?

Investigation Completed and Report Issued

Upon completion of her investigation, Ms. Parker issued her Report dated August 6, 2019 and made six findings:

- Commissioners Barnes and Moak did not violate the Washington Open Public Meetings Act.
- Commissioners Barnes and Moak did not violate the Port Rules in their directives to staff related to Resolution 2019-2.
- Commissioner Moak did not breach his obligation to perform his duties as Commission President.

Findings against Commissioners

Ms. Parker made three findings against Commissioners Barnes and Moak as follows:

1. Commissioner Barnes did violate Port rules and Policies when he called Duany Plater-Zyberk Partners (DPZ) and the State Auditor's Office (SAO) regarding business matters;
2. Commissioner Barnes did create a hostile work environment for Port CEO in violation of Port policies;
3. Commissioner Moak violated the Port Rules requiring civil and respectful treatment of others on one occasion.

Commissioner Barnes did violate Port rules and Policies when he called DPZ and the SAO regarding business matters.

1. On February 18 Commissioner Barnes called the Port's Vista Field consultant DPZ regarding the Ivy land sale matter.
 2. It was reported that this contact could harm the Port's relationship with DPZ.
 3. In June, during the pendency of this investigation, Commissioner Barnes called the State Auditor's Office regarding the Port's buy back clause.
 4. It was reported that this contact could place the Port under increased scrutiny by the SAO.
- Port Rules state "Commissioner request for information shall be made to the Executive Director and that information is to be shared with all commissioners so that each member may be equally informed."
 - Long-standing practices of the Port Commission is to follow this Rule for the orderly, efficient and transparent conduct of Port business.

Ms. Parker reported that:

- When viewed in its totality, the information obtained supports a finding that Commissioner Barnes exhibited repeated, significant hostility – in public and private – against the CEO.

Commissioner Moak violated the Port Rules requiring civil and respectful treatment of others on one occasion.

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1. It was reported that Commissioner Moak yelled “I blame you” at the CEO in reference to the Ivy transaction.
2. It was reported that Commissioner Moak had on more than on occasion in public meetings “jokingly” threatened to fire the CEO.
3. It was reported that Commissioner Moak dressed down a jurisdictional partner’s public works director.
 - Port Rule 3.6 states that Commissioners shall conduct themselves with civility and respect at all times with one another, with staff, and with members of the public.
 - Ms. Parker determined that the information obtained in her investigation substantiated that Commissioner Moak violated this rule when he yelled at the CEO in executive session.

Commission Rules of Policy and Procedure states that Section 5.5 of the Commission Rules of Policy and Procedure states that if Port counsel finds misconduct and the complaint substantiated, a report to Executive Director and the Commission shall set forth the basis for the determination and a recommended action.

The Port Rules 5.9 – 5.11 set forth the sanctions that may be levied as the result of a substantiated complaint of misconduct:

- Censure and/or reprimand
- Reassignment of committee assignments
- Other actions
- Publication the fact of any sanction
- Other legal action that may be available under the law
- The Port shall not indemnify or defend any Commissioner charged with misconduct

Recommended Actions

Commissioner Barnes did violate the Port Rules and Policies when he called DPZ and the SAO regarding business matters.

The recommended actions for this violation by Commissioner Barnes are:

- A. Formal public censure by resolution adopted by the Commission.
- B. Satisfactory completion of training identified by Port Counsel covering topics including
 - Roles and responsibilities of a Port Commissioner
 - Port of Kennewick Commission Rules and Policies
 - Commissioner Barnes shall be personally responsible for any cost or fee associated with the training
- C. Publication of the above sanctions in the Tri-City Herald.

Commissioner Barnes did create a hostile work environment for Port CEO in violation of Port policies.

Because of its serious nature and broad impact, there are several recommended actions resulting from this substantiated allegation of misconduct, as follows:

PORT OF KENNEWICK SPECIAL COMMISSION MEETING

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- A. Formal public censure in the form of a resolution adopted by the Commission.
- B. Satisfactory completion by Commissioner Barnes of training identified by Port Counsel covering the following topics:
 - o understanding, correcting, and preventing hostile work environment behaviors
 - o professional communication skills
 - o roles and responsibilities of a Port Commissioner
 - o Port of Kennewick Commission Rules and Policies
 - o Costs and fees for all such training shall be paid by Commissioner Barnes.
- C. Cooperative participation in team building activities and trainings with Port CEO and staff. Such activities shall be identified by Port Counsel with the assistance of outside consultants, Port CEO and staff.
- D. Publication of the above sanctions in the Tri-City Herald.

Commissioner Moak violated the Port Rule requiring civil and respectful treatment of others on one occasion.

The recommended actions for this violation are:

- A. Verbal reprimand reported in Commission meeting minutes.
- B. Satisfactory completion by Commissioner Moak of training identified by Port Counsel covering the following topics:
 - o professional communication skills
 - o Port Commission Rules and Policies
 - o Costs and fees for all such training shall be paid by Commissioner Moak.
- C. Cooperative participation in team building activities and trainings with Port CEO and staff. Such activities shall be identified by Port Counsel with the assistance of consultants, Port CEO and staff.
- D. Publication of the above sanctions in the Tri-City Herald.

Next Steps

- Port Rule 5.7 provides for a hearing and decision upon the Recommended Action.
- The Complainant and Respondents have the right to request a hearing or to accept and implement the Recommended Action.
- Either decision today – for hearing or to accept the Recommended Action will be implemented at the next Commission meeting.
- If a hearing is requested, the determination and recommended action of Port counsel shall be submitted to a mutually agreeable neutral.
- The neutral will be selected from Judicial Arbitration and Mediation Services (“JAMS”) or Judicial Dispute Resolution (“JDR”), or other similarly qualified third party neutral as agreed upon by the Complainant and the Respondents.
- The neutral selected shall promptly hear, consider and issue a decision regarding the recommended action.
- The neutral shall determine the hearing process and shall issue a decision within 30 days of the hearing.

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- The neutral's decision is subject to reconsideration upon written request by Complainant or Respondent(s).
- The parties shall be notified of the final decision, and any action required by the final decision shall be implemented immediately.
- The costs billed to the Port to date for the investigation are about \$52,000. It is estimated that a hearing process will cost a like or greater amount.

Ms. Luke stated this is an ongoing process and the Port has received the report and recommended action has been submitted and a decision is to be made, whether or not recommended action will be accepted or whether a hearing process will be undertaken. Ms. Luke reminded everyone involved in this process that pursuant to the Port Rules of Policies and Procedures, no employee will be discharged, threatened, or discriminated against in any manner for following up on any complaint or for reporting what they have perceived to be misconduct. Ms. Luke asked, because this process is ongoing, that questions during this interim period, be directed to her, so that either Ms. Luke can address them or direct them to the correct person so that they can be adequately responded to. Ms. Luke inquired if the Commission has any questions.

Commissioner Novakovich inquired why Ms. Parker did not present her report.

Ms. Luke stated Ms. Parker originally had planned on attending, but after consideration of what she believed to be emotions running very high as it related to this issue and her report, she believed it would not be productive for her to be here today.

Commissioner Moak inquired where does the Commission go from here.

Ms. Luke stated a decision regarding the recommended actions, whether they are accepted or not. If the recommended actions are not accepted, then a hearing process would be instituted.

Commissioner Moak would like to make a statement:

A lot of this stemmed from the decision on the Ivy property that adjoined the Port's Vista Field properties. When that came up, it was something that he had very much of an interest in, and he was going to bring that issue to the Commission. But then he heard Commissioner Barnes, very eloquently, discuss the importance of the Ivy property to the Port; the specific location of the Ivy property and where it was, and why we should take a stronger stand. Commissioner Moak thought Commissioner Barnes was extremely eloquent at that time and he thought it deserved greater scrutiny. At no time, did Commissioner Moak ever discuss with Commissioner Barnes or with anybody else, his feelings on the Ivy property, nor would he ever. Commissioner Moak have been in public life for 30 some years in this community. Would he deliberately break the law over something like this? Or anything with the Port of Kennewick. These were allegations that were thrown out there, and Ms. Parker concluded there was no substance. But Commissioner Moak believed that properties outside of the 103 acres outside of Vista Field were something that we ought to be looking at. Commissioner Moak believed that this was policy decision for the Board. Now, he knows some of you over (indicating staff) here disagreed with the decision or the question that we had. At some point, when we had the facts and the answers,

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Commissioner Moak believes we were able to make a great public policy decision. When Commissioner Moak learned what the Farmworkers Clinic was going to be, and the design standards that they applied, he was much more comfortable with that decision. Commissioner Moak has been into design standards for a long time, through his public policy work for the City of Kennewick, and is very appalled by some of the building that has happened around Vista Field over the years and not creating the kind of environment that he thinks our premier project at Vista Field should have. Those sorts of things were weighing on his mind, and we had talked about this in years past and the Amera building and what it was doing, and he did not want to see similar things happening on this property. Commissioner Moak was very pleased and sorry we went through a lot of grief over it. Commissioner Moak believes it was an appropriate public policy decision and to consider. So what happened, there was a difference in opinions, and very clearly, in his mind, he raised his voice, and in Mr. Arntzen's mind, Commissioner Moak yelled. Commissioner Moak stated that is a determination each of us has to make. Commissioner Moak respects Mr. Arntzen feeling that way and Commissioner Moak is sure he felt that way and Commissioner Moak apologized at the next meeting. Unfortunately because this was an Executive Session, he cannot go back and listen to what he said or know exactly what he said that day. In Commissioner Moak's mind, it is certainly far worse than anything that he hears said by the President of the United States or against the President of the United States. But it didn't meet Commissioner Moak's standards of how he should conduct himself. But it was a tense situation, it was a tense situation for staff and it was a tense situation for the Commissioners, and those situations sometimes, the best of us do not prevail and it did not with Commissioner Moak that day and he apologized again today. Commissioner Moak is sorry and beyond that, to him, the sanctions for a single meeting outburst or whatever, seemed a little much. Commissioner Moak prides himself on the way he conducts meetings, which he has done for a variety of organizations, and try to be fair to each Commissioner, fair to staff and fair to the public. That means Commissioner Moak lets comments, even like the ones Commissioner Novakovich uttered earlier this afternoon go by without comment, because he believes that each Commissioner has the right to speak up and say what they have to say. They are each individually elected, and he does not supervise them, he presides over the meetings and tries to keep the meeting moving. Commissioner Moak thinks of it as a referee of basketball, when he lets the plays play through. Commissioner Moak counts on, that if people object, they will raise those objections at the time, and not make complaints, so called anonymous complaints, after when they had a chance to raise those and didn't. The way to correct action is, in Commissioner Moak's mind, is at the time. And if Commissioner Moak can do better at his job, he certainly should. When Commissioner Moak became President of this Port, he was given no instructions on how to interpret the Port Rules and Procedures, given no training on how to use Roberts Rules of Order and yet it seems, that the president is being expected to know these and to follow these and make sure everybody else is following them when he is in the middle of trying to run a meeting and keeping things going. Whether Commissioner Moak likes it or not, he accepts the sanctions, because he thinks it is important to move on. What Commissioner Moak has been doing here for the five and a half years is putting Vista Field first, what he has been doing was trying to get Columbia Gardens done. That is the priorities of what Commissioner Moak has been trying to do and he thinks we have been very successful. The three of us at these tables and staff, have worked well together. And Commissioner Moak knows Mr. Arntzen did not like the decision earlier related to the CEO evaluation, but Commissioner Moak can tell you he has great

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respect, and he told that to Ms. Parker and that is in the record, for what Mr. Arntzen does for this Port. Commissioner Moak told Ms. Parker and will tell Mr. Arntzen, who doesn't believe it or it doesn't look that way by his demeanor, but Commissioner Moak does and he does not see that because he yelled at Mr. Arntzen once, as anything other than his frustration at one meeting. Commissioner Moak thinks Mr. Arntzen has done a great job and he expects that to reflect in Mr. Arntzen's evaluation. Commissioner Moak is human and he makes mistakes, but he committed no law, no violation of law, and most of the allegations were certainly not accepted by investigator, who spent a lot of money, talking to a lot of people and came up with those conclusions. Commissioner Moak accepts the sanctions that are there and looks forward to learning more about the rules of the Port Commission Rules because if the job is that he is going to have to start enforcing them much to a greater deal than he has in the past and letting less pass, then he needs to understand that. If there are ways that we can work better between staff and Commission, he supports that too. Commissioner Moak has great respect for our staff and is disappointed. Commissioner Moak has nothing further at this point.

Commissioner Barnes thanked Commissioner Moak and respects and appreciate everything he said. Commissioner Barnes's tenure as a Port Commissioner at the Port of Kennewick began in this room when he was appointed on May 8, 2012. From day one, Commissioner Barnes's goal and objective has been to look out for the best interest of the voters and the tax payers. For more than six years, up until January of this year, Commissioner Barnes has enjoyed a positive and constructive working relationship with the Port of Kennewick CEO and staff. We have accomplished many things together, of which he is very proud. Commissioner Barnes respectfully disagree with two findings of this investigative report and hereby requests a hearing before a neutral, as provided in Port Policies and Procedure. Commissioner Barnes looks forward to the day when he will be able to tell his side of the story that has led us to this point. In the interim, Commissioner Barnes will continue to work hard, ask tough questions, to protect the best interest of the Port citizens and tax payers.

Ms. Luke understands that at the next Commission Meeting, we will undertake steps to select a neutral for the hearing and to also initiate steps to take the recommended action as it relates to Commissioner Moak. Ms. Luke will bring them forward at the August 27, 2019 Commission Meeting.

Commissioner Novakovich asked Ms. Luke, in reading Ms. Parker's report, it says the witnesses spoke at length at how the Ivy episode caused a severe deterioration of staff morale, some staff now reported they felt fearful of their jobs, and are uncomfortable with one or both of the respondents. Commissioner Novakovich asked how is the staff supposed to function in a hostile work environment.

Commissioner Moak stated ruled Commissioner Novakovich's comments out of order.

Commissioner Novakovich thinks we should vacate the seat of president because he does not think our president...

Commissioner Moak stated Commissioner Novakovich is out of order and asked Ms. Luke if she

PORT OF KENNEWICK SPECIAL COMMISSION MEETING

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has anything further she wishes to add.

Ms. Luke stated she has nothing else to add.

PUBLIC COMMENTS

No comments were made.

COMMISSION COMMENTS

No comments were made.

ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned 3:53 p.m.

APPROVED:

**PORT of KENNEWICK
BOARD of COMMISSIONERS**

Thomas Moak, President

Don Barnes, Vice President

Skip Novakovich, Secretary



AGENDA REPORT

TO: Port Commission

FROM: Lucinda J. Luke, Port Counsel

MEETING DATE: August 27, 2019

AGENDA ITEM: Resolution 2019-17, Selection of Neutral for Hearing Pursuant to Port Commission Rules of Policy and Procedure Section 5

- I. REFERENCE(S):** Port Commission Rules of Policy and Procedure (“Port Rule”) Section 5, adopted by Resolution 2019-10 on June 11, 2019 (attached); Judicial Arbitration and Mediation Services information and roster of neutrals with governmental/public agency experience (attached); and, Judicial Dispute Resolution information and roster of neutrals (attached).
- II. FISCAL IMPACT:** Estimated fees and costs for a hearing process are \$75,000, not including Port CEO and staff time.
- III. DISCUSSION:** In the August 13, 2019 Commission meeting, Commissioner Don Barnes reported that he did not accept the Recommended Action resulting from Tara L. Parker’s August 6, 2019 Report of Independent Investigation determination that Commissioner Barnes A) violated Port Rules when he contacted DPZ and the State Auditor’s Office regarding business matters, and B) created a hostile work environment for Port CEO in violated of Port policies. Commissioner Barnes disagreed with these findings and requested a hearing before a neutral, as provided in Port Policies and Procedure.

Pursuant to Port Rule Section 5.7, when a complaint is made by one or more of the Commissioners against one or more Commissioner, the determination and recommended action of Port counsel shall be submitted to a mutually agreeable neutral selected from the panel of neutrals available at the Seattle office of Judicial Arbitration and Mediation Services (“JAMS”) or Judicial Dispute Resolution (“JDR”), or other similarly qualified third party neutral as agreed upon by the Complainant and the Respondents.

Attached are the Judicial Arbitration and Mediation Services (JAMS) roster of neutrals with governmental/public agency experience and the Judicial Dispute Resolution (JDR) roster of neutrals. I have focused the JAMS list by searching experience with governmental and public agency. JDR has a smaller panel of neutrals and did not offer that search option. You will note that most of the neutrals available on these rosters are retired judges with extensive courtroom, arbitration, and mediation experience. Additionally, most neutrals practiced law for many years prior to becoming a judge. Any of the neutrals on these panels will be qualified to handle the hearing process contemplated by the Port Rule Section 5.

I have provided biographies from JAMS neutrals Hon. Sharon Armstrong, Hon. Ronald E. Cox, Hon. Helen L. Halpert, Lawrence R. Mills, and Hon. Thomas McPhee and JDR neutrals Hon. George Finkle, Hon. Paris K. Kallas, Hon. Steve Scott. From my review and recent input from partners at my firm, I suggest that this narrowed groups of neutrals have the most relevant experience for the purpose of this hearing process. Please note that Judge Halpert was the assigned judge for a case I was involved before she retired. Judge Armstrong was assigned to an arbitration I handled and I have had mediations conducted by Judge McPhee. I have found all to be very knowledgeable, well-prepared, as well as fair and even-handed in their handling of matters. I highly recommend Hon. Sharon Armstrong, if available. Alternatively, either of the other two retired judges from JAMS (Judge Halpert or McPhee) or Hon. Steve Scott from JDR for the neutral to conduct the hearing contemplated by Port Rule Section 5. I also recommend that an alternate neutral be selected in the case that the first choice of neutrals is not available.

IV. COUNSEL RECOMMENDATION: Adopt Resolution 2019-**.

V. ACTION REQUESTED OF COMMISSION:

***Motion:** I move approval of Resolution 2019-17 selecting Hon. Sharon Armstrong as the neutral to conduct a hearing process pursuant to Port Rule Section 5.*

PORT OF KENNEWICK

Resolution No. 2019-17

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK APPOINTING A NEUTRAL FOR HEARING PROCESS

WHEREAS, on March 25, 2019 a citizen complaint against Commissioners Moak and Barnes was received by the Port; and

WHEREAS, in order to address the fact that more than one of the three Port Commissioners was involved in that complaint process, the Port Commission adopted a revision to the Port Commission Rules of Policy and Procedure (“Port Rule”) Section 5 by Resolution 2019-10 on June 11, 2019 to provide for a neutral to conduct the hearing process; and

WHEREAS, in the August 13, 2019 Commission meeting, independent legal counsel, Tara L. Parker’s August 6, 2019 Report of Independent Investigation findings were reported and the Recommended Action resulting from Ms. Parker’s findings was also reported; and,

WHEREAS, Commissioner Don Barnes stated that he did not accept the Recommended Action and he requested a hearing before a neutral, as provided in Port Policies and Procedure; and,

WHEREAS, Port Rule Section 5 states that the determination and recommended action of Port counsel shall be submitted to a mutually agreeable neutral selected from the panel of neutrals available at the Seattle office of Judicial Arbitration and Mediation Services (“JAMS”) or Judicial Dispute Resolution (“JDR”), or other similarly qualified third party neutral as agreed upon by the Complainant and the Respondents; and,

WHEREAS, the Commission has been provided and reviewed with a list of the JAMS and JDR panels of qualified neutrals for the purpose of selecting a third party neutral to conduct the Port Rule Section 5 hearing process.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Board of Commissioners of the Port of Kennewick appoints the Hon. Sharon Armstrong of JAMS as the neutral for the hearing process to be conducted pursuant to Port Rule Section 5. In the case that Hon. Sharon Armstrong is not available, the Board of Commissioners of the Port of Kennewick appoints _____ as the neutral for the hearing process.

BE IT FURTHER RESOLVED that all action by port officers and employees in furtherance hereof is ratified and approved; and further, the Port Counsel is authorized to take all action necessary in furtherance hereof.

ADOPTED by the Board of Commissioners of the Port of Kennewick on the 27th day of August, 2019.

PORT of KENNEWICK
BOARD of COMMISSIONERS

By: _____
THOMAS MOAK, *President*

By: _____
DON BARNES, *Vice President*

By: _____
SKIP NOVAKOVICH, *Secretary*

PORT OF KENNEWICK

Resolution No. 2019-10

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK ADOPTING REVISED SECTION 5 OF THE PORT COMMISSION RULES OF POLICY AND PROCEDURE

WHEREAS, the Port of Kennewick Commission adopted Resolution 2011-05 on February 22, 2011 establishing a formal policy and procedures document to address the specific roles, expectations of conduct, knowledge, disclosures, prohibitions, legal requirements, and accountability of the elected officials who are responsible for the current operation and future direction of the Port of Kennewick; and

WHEREAS, the Port of Kennewick Commission adopted Resolution 2016-01 adopting revised Port Commission Rules of Policy and Procedure (Section 6.1 "Officers"); and

WHEREAS, Port Counsel has identified necessary revisions to Section 5 of the Port Commission Rules of Policy and Procedure that may be required to be implemented to complete the processing the currently pending citizen complaint.

NOW, THEREFORE; BE IT HEREBY RESOLVED that the Board of Commissioners of the Port of Kennewick hereby adopts the attached revised Section 5 of the Port Commission Rules of Policy and Procedure.

ADOPTED by the Board of Commissioners of the Port of Kennewick on the 11th day of June, 2019.

**PORT OF KENNEWICK
BOARD OF COMMISSIONERS**

By: _____

THOMAS MOAK, President

By: _____

DON BARNES, Vice President

By: _____

SKIP NOVAKOVICH, Secretary

5. REPORTING MISCONDUCT

5.1 General. The Port is committed to lawful and ethical behavior in all of its activities and requires its staff and Commissioners to conduct themselves in a manner that complies with all applicable laws, regulations and this policy. Complaints against staff (other than the Executive Director) shall be resolved by the Executive Director, according to law and the Port Policies and Procedures manual. Complaints against the Executive Director shall be resolved by the Port Commission according to applicable contract, Delegation of Authority and the Port Policies and Procedures manual. Complaints against Commissioners shall be resolved as set forth below.

5.2 Complaint. If any person believes that a Commissioner or Commissioners have engaged in misconduct, the Executive Director shall investigate consistent with Section 5.3 and report to the Commission. No employee will be discharged, threatened, or discriminated against in any manner for following up on any complaint or for reporting what they perceive to be misconduct. All complaints must include a description of the alleged misconduct. The proceedings shall be treated confidentially, including the name of the complainant, except to the extent required to complete any investigation and in the event that an action is taken.

5.3 Initial Determination. Based upon the complaint, and only following investigation and with the advice and counsel of Port general or special legal counsel ("Port counsel"), the Executive Director shall determine whether sufficient evidence exists to proceed with an investigation. If the Executive Director determines that insufficient evidence exists, the complaint shall be dismissed. Otherwise, the Executive Director shall proceed as follows.

5.4 Investigation. If an investigation is warranted, the Executive Director shall recuse himself from the process and delegate all further steps to Port counsel, and/or an investigator retained for such purpose by Port counsel. Port counsel shall inform the party/ies subject of the complaint (Respondent(s)) in writing that a complaint has been filed and that an investigation will take place. Port counsel shall provide a copy of the complaint to the Respondent(s) and the Respondent(s) shall have a reasonable time to prepare and submit a response in writing. Port counsel may seek additional information regarding the matter from the Complainant, the Respondent(s) and/or relevant third parties. In conducting the investigation and evaluating all evidence, the Port's counsel shall presume that the Respondent(s) acted ethically and shall determine that an act of professional misconduct has occurred only upon a finding of substantial evidence of such misconduct.

5.5 Determination and Recommendation. Port counsel shall evaluate the complaint and issue a determination within thirty (30) days of receiving all relevant evidence, that the complaint is substantiated or unsubstantiated. If Port counsel finds misconduct and the complaint substantiated, a report to Executive Director and the Commission shall set forth the basis for the determination and a recommended action; otherwise, the complaint shall be dismissed.

5.6 Notification. The Complainant and Respondent(s) shall be notified in writing of the determination and recommended action; or, of the dismissal.

5.7 Hearing and Decision upon Recommended Action. The Complainant and Respondent(s) shall have the right to be heard before the Commission or, if pending before a neutral as discussed below, to be heard before the neutral. If the complaint received is against one Commissioner, following receipt of the determination and recommended action from Port counsel, the Commissioners who are not a party to the complaint shall promptly hear, consider and vote upon the recommended action. If the complaint received is made by one or more of the Commissioners against one or more Commissioner, the determination and recommended action of Port counsel shall be submitted to a mutually agreeable neutral selected from the panel of neutrals available at the Seattle office of Judicial Arbitration and Mediation Services ("JAMS") or Judicial Dispute Resolution ("JDR"), or other similarly qualified third party neutral as agreed upon by the Complainant and the Respondents. The neutral selected shall promptly hear, consider and issue a decision regarding the recommended action. If the parties cannot agree upon the selection of a neutral, the presiding judge for Benton County Superior Court shall select a neutral from the panel available at the Seattle office of JAMS or JDR. The neutral shall determine the hearing process and shall issue a decision within 30 days of the hearing.

5.8 Reconsideration. A decision (whether by Commission vote or issued by a neutral) is subject to reconsideration upon written request by Complainant or Respondent(s). The sole ground for reconsideration shall be that the party seeking reconsideration has new, relevant information which was not considered by Port counsel. A party having new information to submit to the Commissioners or neutral, shall have fifteen (15) days of receipt of the written notice of decision to file a written request for reconsideration stating the reason and including the new information not considered by the Port counsel. Following review of the entire investigative file, the decision and recommendation of the Port counsel and the new information submitted by a party or parties, the Commission or, if applicable, the neutral, shall, within fifteen (15) days of receipt of such new information, hear, consider and render a final decision which may not be further appealed. The parties shall be notified of the final decision, and any action required by the final decision shall be implemented immediately.

5.9 Sanctions. Censure and/or reprimand may be invoked with respect to Commissioner misconduct, in addition to reassignment of committee assignments and other actions.

5.10 Public Notification. Unless otherwise determined by the Commission or neutral in a particular matter, it shall be standard procedure to publish, in a manner deemed appropriate by the Commission or neutral, the fact of any sanction.

5.11 Other Remedies Reserved. Any action taken by the Commission or neutral shall not prevent other legal action that may be available under law. The Port shall not indemnify or defend any Commissioner charged with misconduct, except as otherwise provided under Section 18.



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JAMS doesn't just resolve disputes—we solve problems.

JAMS successfully resolves and manages business and legal disputes by providing efficient, cost-effective and impartial ways of overcoming barriers at any stage of conflict. JAMS offers customized dispute resolution services locally and globally through a combination of industry-specific experience, first-class client service, top-notch facilities and highly trained panelists.

Founded in 1979, JAMS is the world's largest private alternative dispute resolution (ADR) provider. Our panel includes more than 400 retired state and federal court judges and attorneys with proven track records and extensive practice area and industry expertise. JAMS neutrals and clients are supported by more than 200 associates, including ADR systems design experts and case managers with decades of experience.

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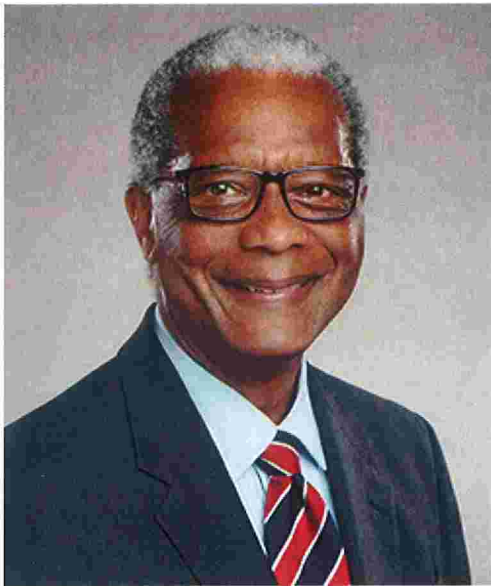
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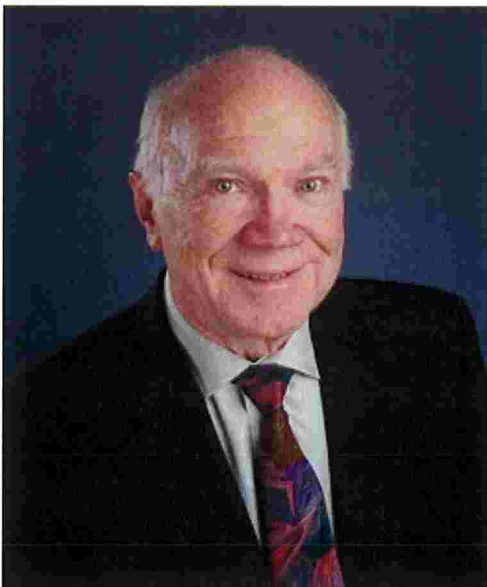
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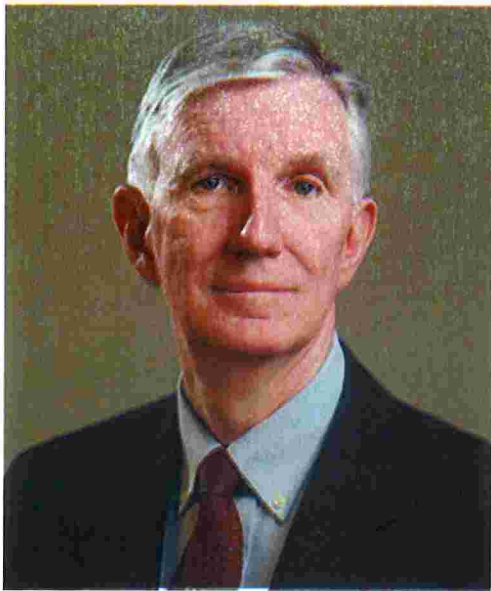
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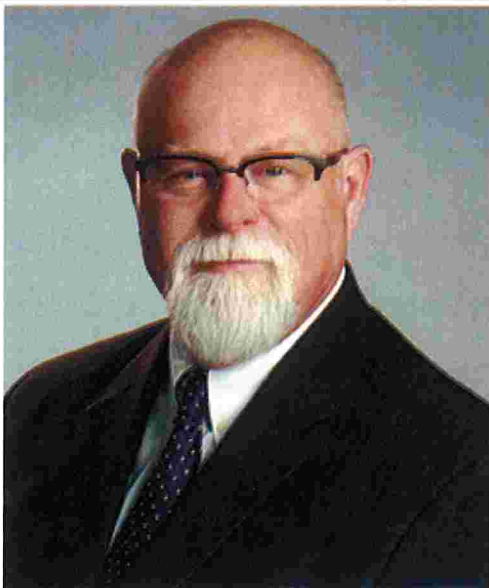
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Eric B. Watness

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Hon. Sharon Armstrong (Ret.)

Case Manager

Michele Wilson
T: 206-292-0457
F: 206-292-9082
1420 Fifth Ave., Suite 1650, Seattle, WA 98101
mwilson@jamsadr.com

Biography

Hon. Sharon Armstrong (Ret.) joined JAMS after 27 years as a judge on the King County Superior Court. Prior to serving as a judge, she practiced law at Garvey, Schubert & Barer, where her practice emphasized complex civil litigation, and prior to that she was a trial attorney for the Federal Trade Commission handling trade regulation litigation. Judge Armstrong has tried a wide range of cases, and was especially known for handling complex disputes. Her experience includes business cases, class actions, employment, environmental, insurance, securities and financial markets cases.

Judge Armstrong is lauded by the legal community for being intelligent, incisive, engaged, and prepared. Lawyers say she is efficient and at the same time very effective and fair, and has a great deal of patience and respect for all parties. Her demeanor, skills and vast experience lend themselves to her being a very effective and fair neutral for all types of cases.

ADR Experience and Qualifications

- Twenty seven years of experience serving as a judge on the King County Superior Court
- Nearly 40 years of legal experience, including many years as a trial lawyer
- Continually recognized as being an outstanding judge, with excellent skills and knowledge
- Many years of experience in presiding over complex matters utilizing her depth of analytical skills
- Has handled over 50 arbitrations

Representative Matters and Experience

Judge Armstrong has handled the following matters:

Antitrust/Trade Practices

- Unfair practices consumer class actions, individual Consumer Protection Act cases
- Antitrust matters concerning manufacturing, transportation, and natural resource companies

Business/Commercial

- Partnership dissolution
- Shareholder derivative actions
- Franchise Act termination litigation
- Commercial borrower/bank disputes
- Business buy/sell cases
- Commercial lease disputes
- Religious organization governance dispute
- Distribution agreement disputes in telecommunications and cosmetics industries
- LLC disputes in various industries concerning breach of contribution agreements, conversion, fraud, breach of fiduciary duties, wrongful forfeiture/termination of membership interest, valuation of member interest

Class Action/Mass Torts

- Unfair practices consumer class actions
- Class action claims involving sex discrimination
- Wage and hour class actions
- Medical provider class action for insurance reimbursement
- Securities fraud class actions

Construction Defect

- Condominium defect claims
- Toxic mold cases
- Design and project management services claims

Employment

- Sexual harassment and retaliation claims
- Individual and class action claims involving race, age, sex and disability discrimination
- Wage and hour class actions
- Non-competition clause disputes
- Wrongful termination
- Wage and commission claims, post-termination payments
- Whistleblower claims
- ERISA

Environmental/Natural Resources

- Toxic clean-up cases
- Regulatory appeals and LUPA actions involving SEPA, Shorelines Management Act, Growth Management Act, and Endangered Species Act
- Timberland brokerage contract dispute
- Dispute concerning transfer of contaminated real property

Insurance

- Medical provider class action for insurance reimbursement
- \$200 million reinsurance dispute claim
- Business and auto coverage cases
- Insurance fraud case

Intellectual Property

- Copyright infringement
- Trade Secret violations

Personal Injury/Torts

- For five years, managed King County Superior Court's large asbestos caseload
- Handled cases involving mesothelioma, medical malpractice, wrongful death, catastrophic workplace injury, government caseworker malfeasance, civil rights, and motor vehicle injury
- Represented Weyerhaeuser Company in formaldehyde litigation
- Title IX violations

Professional Liability

- Legal malpractice litigation
- Dental, medical, and pharmacy malpractice
- Architectural and accounting malpractice
- Medical malpractice, wrongful death
- Nursing home negligence

Real Estate

- Dispute between owners of real property and railroad company over damages to property
- Water trespass
- Adverse possession
- Boundary disputes
- Landlord/tenant commercial lease disputes

Securities/Financial Markets

- Securities fraud class actions

- As practitioner, experienced in broker-dealer litigation

Representative Discovery Master Assignments

- Seattle Tunnel Litigation, King and Thurston Counties
- Homeowner Association property use and governance disputes
- Insurance coverage dispute
- Negligence claim against state entity

Honors, Memberships, and Professional Activities

- "Outstanding Judge" Award, Washington State Bar Association, 2013
- "William L. Dwyer Outstanding Jurist" Award, King County Bar Association, 2013
- Distinguished Alumna, Washington Law Review, 2002
- Named Outstanding Judge, King County Bar Association, 2001
- Named Outstanding Jurist of the Year, American Board of Trial Advocates (Washington Chapter), 1998
- Member, King County Public Defense Advisory Board, 2014 to present
- Trustee, King County Bar Association 2014-2016
- Member, King County Superior Court's Executive Committee, 17 years
- Co-chair, Washington Pattern Instruction Committee, 2000-2012; member, 1995-2000
- Instructor, Washington Judicial College
- President, Secretary, American Judicature Society, Washington Chapter, 2005-2009

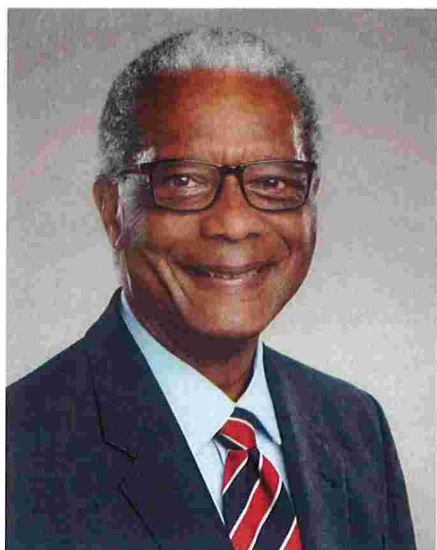
Background and Education

- Judge, King County Superior Court, WA, 1985-2012
 - Chief Criminal Judge, 2009-2010
 - Chief Asbestos Judge 2002-2007
 - Chief Civil Judge, 1996
- Judge pro tem of the Washington Court of Appeals
- Principal, Associate, Garvey, Schubert & Barer, 1979-1985
- Trial lawyer, Federal Trade Commission, 1974-1979
- J.D., University of Washington School of Law, 1974
- M.A., Education, Catholic University of America, 1970
- B.A., English, Stanford University, 1969

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Biography

Judge Ronald E. Cox (Ret.) joins JAMS after more than 23 years of service on the Washington State Court of Appeals. Voters elected Judge Cox to an open position on the court in a contested election, and he took his oath of office in January 1995. During his tenure on the court, he served as Presiding Chief Judge of the entire court. He also served a separate time as Chief Judge of Division One, which is headquartered in Seattle.

While on the court of appeals, Judge Cox authored more than 1,200 decisions in a wide variety of substantive areas. Similarly, he also participated as a member of three-judge panels in decisions authored by others.

Judge Cox spent his entire legal career before joining the court at the law firm now known as K&L Gates LLP, where he was a partner. He had a commercial litigation practice, representing individuals and companies in a variety of substantive areas of law. During this time, he also served as an arbitrator under the King County Mandatory Arbitration Rules.

Judge Cox also served on various bar association committees. These included service as secretary and trustee of the King County Bar Association, as a bar examiner for the Washington State Bar Association and as a member of various judicial evaluation committees. He is also a former President of the King County Bar Foundation, which raises contributions for pro bono legal services and scholarships for minority law students.

Those who have worked with Judge Cox praise him for being well-prepared and efficient, for having in-depth understanding of the issues each case presents and for bringing his intelligence and sense of humor to the job.

Prior to attending law school, Judge Cox served over four years as an officer in the United States Army. His graduation from the United States Military Academy at West Point, New York, was followed by active duty service. This included a variety of command, staff and instructor assignments in Germany, Vietnam and the

United States. He holds decorations and awards for this service.

Judge Cox grew up in Hawaii, where he graduated from Punahou School.

Representative Matters Handled as a Lawyer

- As a lawyer, Judge Cox represented various clients in matters involving a variety of substantive areas of the law, including real estate, real property security, insurance, banking, administrative, municipal, environmental, probate and estate and other commercial subject matters.
- Handled a trial involving two individual owners of a restaurant whose business was damaged by improper activities by the owner and lessee of adjacent property.
- Handled a trial for Children's Home Society of Washington, a charity providing services to foster children. The matter was a will contest in which the charity was one of several charities named in a will, the provisions of which were contested in a trial in superior court.
- Was one of the lead attorneys on the case involving the state of Alaska in litigation against Exxon and others over the 1989 oil spill in Prince William Sound, where the *Exxon Valdez* oil tanker went aground.
- Handled multiple matters involving the Municipality of Metropolitan Seattle (Metro), including a long administrative permitting proceeding for the West Point Sewage Treatment Plant in Seattle and a case involving claims by the telephone company over the original construction of the downtown bus tunnel in Seattle.

Cases Handled as an Appellate Judge

Business/Commercial

- *CTVC of Hawaii, Co., Ltd. v. Shinawatra*, 82 Wn. App. 699 (1997): Resident corporations sued foreign individuals and companies for breach of contract related to a joint venture to provide cable television service to a foreign country. At issue were the proper application of the long-arm statute and the award of reasonable attorney fees.
- *Robinson v. Avis Rent A Car Sys., Inc.*, 106 Wn. App. 104 (2001): An action against car rental companies for alleged violations of the Consumer Protection Act (CPA). The challenged practice was "unbundling" of concession fee charges from car rental rates quoted to consumers renting cars. At issue were whether the challenged practices are exempt from the CPA and whether plaintiffs established that the challenged practices were either unfair or deceptive.
- *Branom v. State*, 94 Wn. App. 964, 974 P.2d 335 (1999): Parents of severely neurologically impaired infant sued neonatologist and hospital, alleging causes of action on their own behalf for costs of raising infant and for their own emotional distress. At issue were whether parents' causes of action were governed by statute controlling actions for injuries occurring as result of health care, even though they were not neonatologist's patients and whether parents, outside their representative capacity on behalf of child, had any cause of action against neonatologist for lack of informed consent.

Civil Rights

- *Washington State Comm'n Access Project v. Regal Cinemas, Inc.*, 173 Wn. App. 174 413 (2013): Nonprofit organization, composed of members who had hearing loss to the extent that they could not understand aural movie content even with the use of an assistive listening device, sued three movie-theater operators under the Washington Law Against Discrimination (WLAD). They sought declaratory and injunctive relief. On appeal, the matters at issue were whether, as a matter of first impression, operators were required to take action that was reasonably possible to make their screenings, for which captions were provided by film distributors, understandable to deaf and hard-of-hearing patrons and whether, as a matter of first impression, the reasonable accommodation provision of the WLAD was void for vagueness.

Employment

- *Anfinson v. FedEx Ground Package Sys., Inc.*, 159 Wn. App. 35, 244 P.3d 32 (2010), aff'd, 174 Wn.2d 851, 281 P.3d 289 (2012): Pickup and delivery drivers for shipping company sued the company under Washington Minimum Wage Act (MWA), claiming a right to overtime pay. On appeal, the major issue was whether, as a matter of first impression, the appropriate test for determining whether a worker is an employee for purposes of the MWA was the economic realities test. A related issue was whether, as a matter of first impression, under state law, the economic realities test included analysis of the relative investment of the parties.
- *Blaney v. Int'l Ass'n of Machinists & Aerospace Workers, Dist. No. 160*, 114 Wn. App. 80, 55 P.3d 1208 (2002), aff'd in part on other grounds sub nom. *Blaney v. Int'l Ass'n of Machinists & Aerospace Workers, Dist. No. 160*, 151 Wn.2d 203, 87 P.3d 757 (2004): A union member sued her union, which had not selected her as a business representative and removed her as senior chief shop steward, for gender discrimination under the WLAD. Trial court entered judgment for union member on a jury verdict. On appeal, the major issue was whether actual damages under the WLAD included income tax consequences of the jury award.
- *Morgan v. Kingen*, 141 Wn. App. 143, 169 P.3d 487 (2007), aff'd, 166 Wn.2d 526, 210 P.3d 995 (2009). Employees of company that filed for Chapter 11 bankruptcy protection brought class action against the company's officers under wage-claim statutes, seeking to recover unpaid wages, exemplary damages, attorney fees and costs. On appeal, the major issue was whether the officers' failure to pay wages was "willful," such that officers were liable under wage-claim statute for double damages, despite the company's financial difficulties. Also at issue was whether the exemplary damages awarded to employees were to consist of double the gross amount of wages, without deduction for withholding taxes.
- *Perry v. Costco Wholesale, Inc.*, 123 Wn. App. 783, 98 P.3d 1264 (2004): An action by employee under the WLAD, alleging hostile work environment sexual harassment. At issue were whether employer failed to take effective remedial action to end the sexual harassment of employee and whether short continuance of trial was adequate sanction for employer's discovery violation. Attorneys' fees were also at issue.
- *Washington v. Boeing Co.*, 105 Wn. App. 1, 19 P.3d 1041 (2000): Suit by a former employee for claims under WLAD and other torts. At issue were whether the company knowingly permitted a hostile work environment to exist to establish the "continuing violation" exception to limitations period on employment discrimination claims and whether inappropriate forms of address by co-workers and other offensive conduct established a hostile work environment sexual harassment claim. Other substantial issues were also at issue.
- *Johnson v. Seattle Public Utilities*, 3 Wash.App.2d 1055: Action under the WLAD by former employees of a municipality who were fired for cause. At issue was whether the jury verdict in favor of the municipality was supported by governing law and substantial evidence in the record.

Environmental

- *Puget Sound Energy, Inc. v. East Bellevue Community Council*: Case under the Land Use Petition Act involving whether the council's disapproval of a conditional use permit was improper. Another issue was whether the council had the legal authority to review the shoreline conditional use permit.
- *Potala Vill. Kirkland, LLC v. City of Kirkland*, 183 Wn. App. 191(2014): Property developers sued city, seeking writ of mandamus directing city to accept and process building permit application for proposed project. On appeal, the issue was whether filing of application for shoreline substantial development permit vested rights to zoning ordinances for entire project that existed on date of application.

Estate/Probate/Trusts

- *In re Estate of Bernard*, 182 Wn. App. 692, 332 P.3d 480 (2014): After testamentary documents were filed, original contingent beneficiaries of will and revocable living trust contested a trust and estate dispute resolution agreement entered into by settlor and his son. On appeal, the court decided that dispute resolution agreement could be modified by another such agreement without court order. The court also decided that settlor substantially complied with modification requirements set forth in dispute resolution agreement and that settlor was not required under Trust and Estate Dispute Resolution Act (TEDRA) to

- give notice to or obtain signatures of contingent beneficiaries ruling.
- *In re Verah Landon Testamentary Trust*, 3 Wash.App.2d 1006: One of several appeals by parties to a testamentary trust. At issue for the appeals were interpretation of the trust instrument, the will and the application of the provisions of TEDRA and the Declaratory Judgment Act to the case.

Financial Markets/Banking

- *Freestone Capital Partners L.P. v. MKA Real Estate Opportunity Fund I, LLC*, 155 Wn. App. 643, 230 P.3d 625 (2010): Lenders sued borrower and guarantors, seeking declaration that borrower was in default on promissory notes and seeking a monetary judgment against guarantors. On appeal, a major issue was whether non-resident guarantors purposely availed themselves of the privilege of conducting business in Washington, as required to exert personal jurisdiction over guarantors. A related issue was whether assertion of personal jurisdiction over guarantors violated traditional notions of fair play and substantial justice. Additional issues were whether guarantors were bound by choice of law provision in promissory notes and whether they were bound by choice of law provision in amendment to promissory notes extension agreements.
- *GMAC v. Everett Chevrolet, Inc.*, 179 Wn. App. 126, 317 P.3d 1074 (2014): Lender on commercial line of credit evidenced by demand note sued borrower for default. On appeal, a major issue was whether any duty of good faith limited the lender's right to demand repayment at any time for any reason or no reason. A related issue was whether the lender was equitably estopped by its declaration of default and demand for repayment.
- *Washington Federal v. Gentry*, 179 Wn. App. 470 (2014): Case deciding whether a commercial borrower was personally obligated under the terms of loan documents. The opinion discusses, in detail, the provisions of the Washington Deeds of Trust Act and how they apply to obligations secured by deeds of trust.
- *Fed. Fin. Co. v. Gerard*, 90 Wn. App. 169 (1998): A financial institution that acquired promissory note, for value paid, from the Federal Deposit Insurance Corporation (FDIC) in its receivership capacity sued the maker of the note. The maker asserted a limitations defense. On appeal, a major issue was whether state or federal law determined if financial institution was entitled to take advantage of special limitations period applicable to suits by the FDIC in its receivership capacity. Another major issue was whether assignment of the note carried with it all of the rights of the FDIC to enforce the instrument.

Government/Public Agency

- *O'Neill v. City of Shoreline*, 145 Wn. App. 913, 187 P.3d 822 (2008). Citizen brought Public Records Act (PRA) action against city for disclosure of email sent to city's deputy mayor alleging improprieties in city zoning decisions, metadata associated with the email and other records. On appeal, a major issue was whether metadata associated with public records email is also a public record for purposes of disclosure under the PRA.
- *Washburn v. City of Fed. Way*, 169 Wn. App. 588, 283 P.3d 567 (2012), *aff'd* on other grounds, 178 Wn.2d 732, 310 P.3d 1275 (2013): Victim's daughters, individually and on behalf of victim's estate, sued the city arising from an act of domestic violence in which victim's intimate partner stabbed victim to death in her home. This followed within hours of service of a protection order on partner at the home by city police. On appeal, the major issue was whether city was liable under the circumstances for the actions of its police officer.
- *Hertog v. City of Seattle*, 88 Wn. App. 41, 943 P.2d 1153 (1997), *aff'd* sub nom. Hertog, ex rel. S.A.H. v. City of Seattle, 138 Wn.2d 265, 979 P.2d 400 (1999): The *guardian ad litem*, on behalf of child raped by probationer, sued city and county for negligent supervision of probationer. On review, a major issue was whether the probationer could have reasonably expected that communications with psychologist would be privileged. Another issue was whether the probation officer had duty to take reasonable steps to control probationer.
- *Am. Civil Liberties Union of Washington v. Blaine Sch. Dist. No. 503*, 86 Wn. App. 688, 937 P.2d 1176 (1997): Requester of documents from school district sued district, seeking determination that district's refusal to mail documents was violation of PRA. On appeal, the major issue was whether the district was required to mail documents to requester; under circumstances of the case.
- *Edmonds Shopping Ctr. Associates v. City of Edmonds*, 117 Wn. App. 344 (2003): Owners of cardroom brought declaratory judgment action against city seeking determination that ordinance banning

cardrooms was unconstitutional. On appeal, the primary issues were whether the ordinance was legitimate exercise of police powers and whether the ordinance prohibiting expansion of existing cardrooms was either preempted by state law or violated due process.

- *Kilbourne v. City of Everett*, 3 Wash.App.2d1061: This was an action by a former employee of a municipality for alleged violations of law. The main issue was whether the general statute of limitations "for any other injury to the person or rights of another not [otherwise] enumerated" barred various claims by a former employee against the municipality.

Insurance

- *Diamaco, Inc. v. Aetna Cas. & Sur. Co.*, 97 Wn. App. 335, 983 P.2d 707 (1999): An insured public contractor sued its insurer, seeking declaration that comprehensive general liability (CGL) and umbrella policies covered city's claims against contractor for defective work on road construction project. At issue were the definition of property damage in insuring clause of policies and whether exclusion for property damage to property within insured's care, custody and control, if insured has agreed to insure property, precluded coverage.
- *Schwindt v. Underwriters at Lloyd's of London*, 81 Wn. App. 293, 914 P.2d 119 (1996): A contractor that had constructed medical building sought coverage under its property damage liability insurance policy for owners' claims for damages related to alleged faulty construction of building. At issue was whether the claimed damages fell within policy's exclusions for defective products and faulty work.
- *Leahy v. State Farm Mutual Automobile Insurance Company*, 3 Wash.App.2d 613, 418 P.3d 175 (2018): This was an action by an insured against its insurer in which claims of bad faith and breach of contract were at issue. A principle issue, among others, was whether the attorney-client privilege precluded discovery of protected matters in the insurer's claim file.
- *He v. Norris*, 3 Wash.App.2d 235, 415 P.3d 1219 (2018): This was an action by an insured against its insurer claiming breach of contract and bad faith. Among the issues decided were whether there was any special relationship between the insurer and its insured motorist that imposed a duty of the insurer to review the adequacy of insurance coverage.

Real Property

- *Riss v. Angel*, 80 Wn. App. 553, 912 P.2d 1028 (1996), amended (Feb. 13, 1996), aff'd and remanded, 131 Wn.2d 612, 934 P.2d 669 (1997): Lot owners sued other homeowners in a development, challenging rejection of lot owners' plan to build new dwelling. On appeal, the major issue was whether homeowners unreasonably disapproved lot owners' plans for new dwelling. Other issues were whether homeowners were jointly and severally liable for damages resulting from disapproval and reasonable attorney fees.
- *Ray v. King Cty.*, 120 Wn. App. 564, 86 P.3d 183 (2004): Landowners, as successors in interest to grantors who conveyed an interest by deed to railway in 1887, sued to quiet title against county, as railway's successor in interest, to determine whether the deed conveyed fee title or an easement with regard to a 100-foot-wide strip of land. On appeal, construction of the intent of the parties to the original deed was the primary issue.
- *Parkridge Associates, Ltd. v. Ledcor Indus., Inc.*, 113 Wn. App. 592, 54 P.3d 225 (2002): A general contractor sued subcontractor and others, alleging failure to defend, contractual indemnification and breach of express contractual warranties, among other claims. At issue were the controlling date for the beginning of statute of repose and whether general's claims accrued as of that date.
- *Boeing Employees' Credit Union v. Burns*, 167 Wn. App. 265 (2012): Lender that had a subordinate deed of trust that secured borrowers' obligations under a promissory note sought an order, after the encumbered property was sold at a trustee's sale at the direction of the holder of a senior deed of trust, that it was entitled to the portion of the surplus funds of the sale that would satisfy borrowers' debt. On appeal, the court decided that entry of a judgment on a promissory note does not extinguish the lien of a deed of trust that secures the note. The court also decided that allowing lender to obtain a portion of the surplus funds to satisfy borrowers' debt would not violate the anti-deficiency provisions of the Deeds of Trust Act.
- *BTNA LLC v. Formosa Brothers International*, 199 Wash.App. 1039: This was a landlord/tenant dispute in which the major issue was who was entitled to the award of reasonable attorneys' fees under the terms of a lease where the landlord took a voluntary nonsuit against the tenant in an unlawful detainer proceeding.

Securities

- *Federal Home Loan Bank of Seattle v. Barclays Capital, Inc.*, 1 Wash.App.2d 551, 406 P.3d 686 (2017): This was a case in which a bank purchased substantial securities from an issuer just before the most recent financial crisis. When the value of the securities dropped during the crisis, the bank sued the issuer and others, claiming the prospectus was misleading. The central issue in the case was whether reasonable reliance on a prospectus is an essential element of the Washington State Securities Act, as it is under federal securities law.
- *Stewart v. Estate of Steiner*, 122 Wash.App. 258, 93 P.3d 919 (2004); review denied 153 Wash.2d 1022 (2005): This was a case in which a purchaser of a security sued under the Washington State Securities Act based on claimed oral representations outside the signed subscription agreement. At issue was whether the broker established that he relied on the oral representations or omissions after signing the subscription agreement providing that he relied solely on the written offering memorandum.

Honors, Memberships, and Professional Activities

Selected Awards and Honors

- Recipient, Judge of the Year Award, King County Bar Association
- Recipient, Judge of the Year Award, Washington Women Lawyers, King County Chapter
- Recipient, Henry M. Jackson Distinguished Alumni Public Service Award, University of Washington School of Law
- Honorary Member, Order of the Coif, Washington Chapter
- Honorary Member, American College of Real Estate Lawyers (elected as a regular member in 1985, before becoming a judge; assumed honorary status upon becoming a judge)

Professional Activities

- Part-time Lecturer, University of Washington School of Law
- Former Mentor, Professional Mentor Program, University of Washington School of Law
- Former Mentor, Future in the Law Institute, King County Bar Foundation
- Former Member, Washington State Minority and Justice Commission
- Former President, King County Bar Foundation
- Former Secretary and Member, Board of Trustees, King County Bar Association
- Former Member, Board of Trustees, University of Washington Law School Alumni Association
- Former Member, Court Congestion and Delay Reduction Task Force, King County Bar Association
- Former Member, State Judicial Voter Pamphlet Advisory Committee
- Former Member, Board of Trustees, American Judicature Society, Washington Chapter
- Former Member, King County Bar Association Judicial Election Reform Task Force
- Former Board Liaison, King County Bar Association Judicial Screening Committee I
- Former Member, King County Bar Association Judicial Conferencing Committee
- Former Member, Board of Trustees, Public Defender Association
- Former Member, Board of Bar Examiners, Washington State Bar Association
- Former Member, Real Property Council of the Real Property, Probate & Trust Section, Washington State Bar Association
- Former Instructor, Bar Review Associates of Washington

Civic Activities

- Former Member, State Advisory Council, Children's Home Society of Washington
- Former Trustee, Children's Home Society of Washington
- Former Vice-President and Member, Board of Trustees, Seattle Country Day School
- Former Mentor, Steps Ahead Program, Seattle Community for Youths at Risk, Inc.
- Former Member, Board of Ethics/Fair Campaign Practices Committee, City of Seattle

Publications

- Developing and Using Evidence Ethically, Washington State Bar Association CLE Seminar on "Navigating the Rules of Evidence" (June 1998)
- "Good-bye, Frye: Hello, Daubert," *The Practical Litigator*, 1994
- What You and Your Expert Witnesses Should Expect From Each Other, Washington State Bar Association CLE Seminar on "Essentials of Evidence" (March 1993)

Background and Education

- Washington State Court of Appeals, 1995–2018
 - Presiding Chief Judge, Washington State Court of Appeals, 2007–2008
 - Chief Judge, Division One, Washington State Court of Appeals, 2005–2007
- Partner, Preston, Gates & Ellis LLP (now K&L Gates LLP), 1970–1994
- J.D., University of Washington School of Law, 1973
- B.S., United States Military Academy, 1966

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Biography

Hon. Helen L. Halpert (Ret.) joined JAMS in 2018 after nearly 30 years of distinguished service to the judiciary in King County, including 19 years on the King County (Washington) Superior Court. Judge Halpert's prior experience includes serving as the Assistant Dean at the University Of Washington School Of Law and as a public defender, where she headed the appellate unit.

Judge Halpert has been described as indispensable when it comes to her service to the Seattle legal community. She has been recognized as Judge of the Year by both the King County Bar Association and the King County Chapter of Washington Women Lawyers. Judge Halpert served as a member of the Washington Pattern Jury Instruction Committee and was appointed co-chair of that committee in 2012.

She is known for her extraordinary kindness and ability to ensure that individuals feel understood when presenting their cases. She cuts through the nonsense and has a good sense of practicality. Judge Halpert brings intellectual rigor, integrity and compassion to each case and treats both sides with dignity and respect. Her dedication to settling cases, combined with her judicial wisdom and strategic planning, allows her to successfully bring parties to resolution.

ADR Experience and Qualifications

- Served as a judge for almost 30 years, in all four divisions of the King County Superior Court and at both the court of limited jurisdiction and superior court levels
- Conducted settlement conferences throughout her judicial career
- Administrative office for the Courts and Settlement Judge Panel for Child Welfare Cases
- Performed substantial committee work while a judge to coordinate effective responses to emerging issues

- in the legal community
- Trained as Title IX external adjudicator for colleges in sexual assault and harassment cases

Representative Matters

Business/Commercial

- Four week-bench trial involving corporate fraud and breach of fiduciary duty; entered verdict awarding several million dollars
- *Expeditors International of Washington v. Expeditors of Japan*, 139 Wn. App 1070 (2007) (unpublished); described by Court of Appeals as addressing a complex corporate transaction

Employment

- *Hirata v. Evergreen State Limited Partnership No. 5*, 124 Wn. App 632 (2004); sex discrimination and harassment; one of first cases addressing “offset” payments for federal income tax consequences of award, pursuant to *Blaney v. International Association of Machinists*
- *Bally v. Ocean Transportation Services*, 136 Wn. App 1052 (2007) (unpublished); complicated wage and hour issues
- A variety of other employment cases, including disability discrimination

Family Law

- *In re Marriage of Bernard*, 165 Wn. 2d 895 (2007); enforceability of prenuptial agreement
- *In re Marriage of Gunn-Bohm v. Bohm*, 158 Wn. App 1026 (2010) (unpublished); unusually complex pension valuation issues
- *In re Marriage of Vandal* (unpublished, 199 Wn. App 1034 (2017)) (unpublished); complex characterization issue of small, personal services corporation
- Substantial experience with domestic violence issues; has tried many cases in the civil and criminal arenas
- Arbitrated issue regarding parenting coordinator and has established substantial expertise regarding use of parenting coordinators
- Both a contributor to and the primary substantive editor of the first three editions of the *Domestic Violence Manual for Judges*
- Handled contested adoptions, both at trial and as a settlement conference judge

Insurance

- *Ledcor Industries v. Mutual of Enumclaw*, 150 Wn. App 1(2009); insurance coverage issues
- *Mutual of Enumclaw v. Archer*, 122 Wn. App 1073 (unpublished, 2004)
- Post-Confirmation Committee of *In re Pierce County Housing Authority v. Pierce County*, 188 Wn. App 1039 (unpublished, 2015)

Personal Injury & Tort

- Handled summary judgments for Asbestos litigation
- Auto torts, including bicycle accidents
- Various coverage issues under the Jones Act

Public Interest

- *Jane and John Does and Seattle Pacific University v. King County*, 192 Wn. App 10 (2015); public disclosure case regarding access to video of the Seattle Pacific shooting
- *Branson v. Port of Seattle*, 152 Wn. 2d 862 (2004); authority of Port of Seattle to impose a gross receipt tax on car rental companies

- *In re Ballot Title Appeal of City of Seattle Initiatives 107-110*, 183 Wn. App 379 (2014)
- Litigated case addressing disparate impact outside the context of Title VII and Title IX, challenging the legislative amendments switching the “per se” standard for driving while intoxicated from blood to breath

Real Estate and Landlord Tenant

- Landowner liability (trial and summary judgments of a number of cases and as chair of WPI Subcommittee authoring instructions in this area)
- A variety of adverse possession and boundary dispute issues, including *Shaw v. Merritt*, 124 Wn. App 1040 (unpublished, 2004); summary judgment whether easement by necessity, implication or public use had been established
- Housing discrimination; whether the inclusion of holders of Section 8 housing vouchers as members of a protected class by the Seattle Municipal code exceeded police powers under WA Const. Article I, Section 11

Honors, Memberships, and Professional Activities

Memberships and Professional Activities

- Washington State Bar Association (inactive)
- California State Bar Association (inactive)
- Family Law CASA-Board of Directors
- Washington Pattern Jury Instruction Committee, 1996–present
 - Co-Chair, 2013-2018
- Legislative Sentencing Reform Task Force, 2014
- Becca Task Force, 2010–present
 - Co-Chair, 2016
- Judicial Advisory Committee, Center for Children and Youth Justice, 2010–present

Selected Awards

- Judge of the Year, King County Bar Association, 2001
- Judge of the Year, Washington Women Lawyers, King County Chapter, 2001
- Judge of the Year, Washington Women Lawyers, King County Chapter, 2018

King County Court Subcommittee Memberships

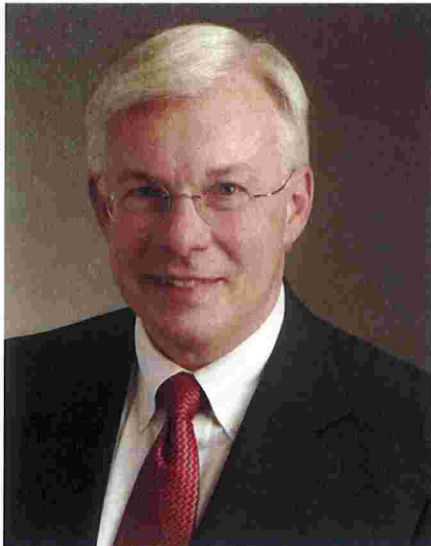
- National Council of Juvenile and Family Court Judges, 2015–2018
- Superior Court Judges Association Family and Juvenile Law Committee, 2011–2018
- Superior Court Judges Association Criminal Law and Rules Committee, 2001–2004 and 2013–2014

Background and Education

- Judge, King County Superior Court, 1999–2018
 - Assistant Presiding Judge, 2008–2010
 - Chief Criminal Judge, 2007
 - Chief Judge Juvenile Court, 2012–2013
 - Lead Dependency Judge, 2015–2018
- Judge, Seattle Municipal Court, 1989–1999
 - Presiding Judge, 1997–1999
- Attorney, The Defender Association, 1985–1989
- Assistant Dean, University of Washington School of Law, 1980–1985
- Judicial Clerk, Washington Court of Appeals, Division II, 1977–1980
- J.D., University of California Davis School of Law, 1977
- A.B., Occidental College, 1974

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Lawrence R. Mills, Esq.

Case Manager

Patricia Usak

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pusak@jamsadr.com

Biography

Lawrence R. Mills, Esq. brings to his ADR practice an accomplished and multi-faceted career of over 35 years as a lawyer specializing in litigation and business counseling, and over 25 years of experience as an arbitrator and mediator. Larry is well known in the ADR field, and, in addition to being a Fellow in the College of Commercial Arbitrators and a Distinguished Fellow in International Academy of Mediators, he has served as Chair of the American Bar Association Section of Dispute Resolution.

As a mediator, Larry is known for being engaged and analytical and for leading parties to effective resolution. As an arbitrator, Larry is known for his fairness and proven ability to manage and adjudicate complex disputes. He has mediated and arbitrated a wide variety of cases such as business and commercial contract disputes, real estate matters, professional liability disputes, and cases involving environmental issues and government entities.

ADR Experience and Qualifications

- Over 25 years of experience as a mediator and arbitrator during which he handled hundreds of cases in a wide variety of practice areas
- Over 35 years of experience as a commercial litigator, business lawyer, and leader in the legal community
- Former chair of the American Bar Association Section of Dispute Resolution and the Washington State Bar Association, Alternative Dispute Resolution Section
- Fellow in the College of Commercial Arbitrators and a Distinguished Fellow in International Academy of Mediators
- Accomplished author in the field of ADR and has participated in numerous ADR trainings across the country

Representative Matters

• Business and Contract Disputes

- Mediated and provided neutral evaluation in a dispute regarding responsibility for damages under a contract for transport of a perishable food product
- Arbitrated a case with a claim for refund of a deposit under a contract for purchase of a horse for breeding
- Arbitrated a claim for attorneys' fees on the discharge of a law firm in a commercial litigation
- Mediated dispute between a municipal bond broker and a brokerage company regarding a non-competition provision
- Mediated dispute regarding parking charges set by agreement between a tenant and a parking company
- Mediated case with claims arising out of alleged breach of warranties on sale of business
- Mediated case with claims for damages to restaurant business caused by competitor infringing on concept
- Mediated case with claim for breach of a loan commitment and related damages
- Mediated case with claim by a financial advisor for breach of a contract for strategic planning and executing a strategic transaction for a hospital district
- Arbitrated disputes between materials supplier and distributor regarding allocation of territory and pricing
- Arbitrated case with claim by an Indian tribe for damages for failure to perform a settlement agreement
- Arbitrated multi-faceted dispute between two on-line services to match compatible individuals for dating
- Arbitrated case with claim for indemnification arising out of alleged breaches of representations and warranties in an asset purchase agreement of a seafood company

• Construction

- Arbitrated case with claims for reimbursement of pre-development design and permitting expenses for a multi-lot residential development
- Mediated case with claims arising from site preparation and grading contract
- Mediated action regarding recovery of costs of resurfacing access easement road
- Mediated case with claim for damages for loss of view because of construction in breach of a height restriction covenant and subsequent arbitration of issues arising out of the performance of the mediated settlement agreement
- Arbitrated dispute between owners of condominium spaces in a building regarding the disapproval of a change of use of a portion of the building

• Employment and Labor

- Mediated a dispute regarding claims of breach of a covenant not to compete and misappropriation of trade secrets
- Arbitrated claims for discrimination by a physician against a medical clinic
- Arbitrated a case involving an employee's claim for a bonus under an incentive bonus plan
- Mediated dispute regarding the scope of a non-competition agreement involving a life insurance sales representative
- Mediated case involving a claim of embezzlement by an executive of a nonprofit organization with a counterclaim of ethnic discrimination
- Mediated discrimination claim involving misuse of company confidential information
- Mediated case involving breach of a non-competition agreement and appropriation of trade secrets
- Mediated case with claims for wrongful termination and withholding of wages
- Arbitrated gender discrimination claim against a software engineering company
- Arbitrated case with claims for vested benefits under ERISA by former law firm shareholder
- Mediated dispute regarding failure of an employer to contribute to a contractors' "retro fund" regarding group premiums for industrial insurance
- Mediated case with claims for contributions to benefit trust under collective bargaining agreement

• Energy

- Arbitrated case with claim for payment regarding chemicals supplied for ethanol production facilities
- Arbitrated case with claim by a chemical supplier for amounts not paid by a customer

- Arbitrated case with claim for liquidated damages for breach of a retailer contract for supply of branded gasoline
- **Environmental**
 - Arbitrated case with claim for breach of contract to pay for substantial remediation of hazardous waste upon the removal of underground petroleum storage tanks
 - Mediated claim by a port district for environmental clean-up costs of an airport property
 - Mediated claim by a port district for recovery of escrowed funds for clean-up costs of commercial property
- **Government Entities**
 - Mediated case with claim by a development company for damages against a municipality for failure to approve development permits
 - Mediated claim by a state governmental agency for breach of warranty by a seller of air pollution mitigation equipment
 - Mediated claim against a public hospital district for financial advisory service fees for a strategic transaction
- **Intellectual Property**
 - Mediated case with claim for damages and for trademark infringement
 - Mediated case with claim for breach of software license
 - Mediated case with claims for trademark and copyright infringement
 - Mediated case with claims for damages and injunctive relief for misappropriation of trade secrets in the business of selling computer hardware
 - Mediated case with conflicting claims to intellectual property and funds relating to a non-profit organization for the prevention and treatment of a disease
 - Arbitrated breach of non-compete agreement and failure to transfer intellectual property
- **Professional Liability**
 - Mediated case with claims to recover the value of a house and damages for misrepresentation by a real estate broker that a transaction was a re-finance when in fact it was a sale
 - Mediated case with claim for attorneys' fees in which the client counterclaimed for malpractice
 - Mediated malpractice case with claim against attorneys relating to a protracted legal proceeding regarding disclosure of public records and penalties for nondisclosure
- **Real Estate**
 - Mediated a dispute among family members regarding ownership and use of property in the Philippines
 - Mediated a case involving a claim to collect amounts secured by a deed of trust granted by a prior owner of commercial property
 - Mediated dispute between two development companies regarding a commercial and residential real estate development
 - Arbitrated failure of a landlord to approve a commercial tenant's plan for tenant improvements
 - Mediated dispute between a family and a developer regarding an easement and the right to use developable property
 - Mediated intra-family dispute regarding ownership and contributions to expenses for a personal residence
 - Mediated case with claim for damages for breach of a commercial lease involving unpaid rent and damages
 - Mediated case with claims regarding breach of contract for development of affordable housing
 - Mediated case with claims for damages for sale of property without disclosing zoning violations
 - Mediated case with claims of misrepresentation in the sale of residential property that sustained considerable damage because of abnormal settling of the foundation
 - Mediated dispute between two members of a limited liability company engaged in the business of selling commercial and residential real estate
 - Mediated case with claim for damages for misuse of a road easement and trespass
 - Mediated case with claim for damages based on loss of priority of a security interest in real property where the obligor filed for bankruptcy
- **Securities/Financial**
 - Arbitrated a multi-party case involving claims of breach of fiduciary duty by an investment advisor
 - Mediated case with claim by investors for losses in their investment accounts over a period of years due to unsuitability of investments recommended by broker
 - Mediated case with claim for breach of agreement regarding a soccer program
 - Arbitrated case with consumer claim for conversion of funds by a trading and barter company
 - Mediated case with claim for negligent investment management

- Mediated case with claims for damages for negligent reporting of credit information
- Arbitrated case with claim for attorneys' fees under Washington Securities Act
- Mediated case with investors' claims against a financial consultant for investment losses from unauthorized sales and purchases of securities and excessive trading to generate commissions

Honors, Memberships, and Professional Activities

Honors

- Recognized as *Best Lawyers'* 2018 Seattle Arbitration "Lawyer of the Year"
- Recognized as a Best Lawyer, Alternative Dispute Resolution Category, Best Lawyers in America, 2015-2016
- Selected as a Washington Super Lawyer in the field of ADR, 2003-2013

Memberships and Professional Activities

- Board of Directors, Community Foundation Sonoma County, 2016-present
- ADR Committee, Sonoma County Bar Association, 2015-present
- Member, Mediation Society of San Francisco, 2014-present
- Distinguished Fellow, International Academy of Mediators, 2009-present
- Fellow, College of Commercial Arbitrators, 2004-present
- Council Member, American Bar Association Section of Dispute Resolution, 2002-2012
 - Chair, 2007-2008
- FINRA Panel of Arbitrators, 2002-present
- Hearing Officer, Washington State Bar Association, 2001-2012
- Chair, Dispute Resolution Section of Washington State Bar Association, 2001-2002
- ADR Committee, Federal Bar Association of the Western District of Washington (Rule 39.1 Mediator and Arbitrator), 1998-present
- Member, King County Bar Association ADR Section, 1998-present
- Chair of the Board, Healdsburg Forever (community endowment), 2017
- Board of Directors, Bainbridge Community Foundation 2004-2007 and 2010-2013
 - President, 2006-2007
- Board of Directors, Bainbridge One Call for All, 2001-2004
 - President, 2003
- Board of Directors, Bainbridge Public Schools Foundation, 2002-2004

Selected Publications

- "Effective Mediation Advocacy: How Legal Counsel Can Make Or Break A Settlement," *Daily Journal*, 2015
- "The Appropriate Relationship Between Arbitration, Mediation and Settlement," *ABA Section of Dispute Resolution Magazine*, 2015
- "Exceeded Powers: Exploring Recent Trends in Cases Challenging Arbitral Authority" (with Thomas J. Brewer), *Alternatives*, September 2013
- "When Arbitrators Exceed Their Powers," (with Thomas J. Brewer), *Dispute Resolution Journal*, April 2009
- "Vacatur of Arbitration Awards: A Real-World Review of the Case Law," (with Thomas J. Brewer), *Dispute Resolution Magazine*, 2006
- "A Courtroom Lawyer's Guide to Arbitration," (with Thomas J. Brewer), *Litigation*, Spring 2005
- "ADR Drafting Tips," *Dispute Resolution Magazine*, 2002
- The Arbitration Alternative: Submission Cases, *WSBA Litigation News*, 2000
- "Combining Mediation and Arbitration," (with Thomas J. Brewer), *Dispute Resolution Journal*, November 1999

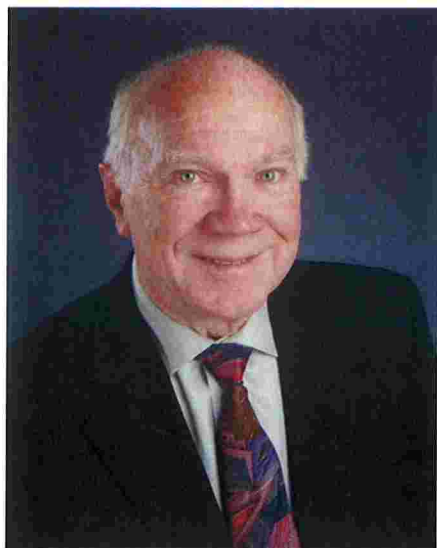
Background and Education

- Partner/Shareholder, Mills Meyers Swartling, 1981-2013
- Former panel member, American Arbitration Association (Commercial, Construction, and Large Complex Cases, Arbitration Panels, and General and Construction Mediation Panels), 1985-2012
- J.D., University of Michigan, 1974; Editor-in-Chief, *University of Michigan Journal of Law Reform*, Vol. 7
- M.P.P., University of Michigan, 1973
- B.S.E., with high honors, Princeton University, 1969

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Hon. Thomas McPhee (Ret.)

Case Manager

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Biography

Hon. Thomas McPhee (Ret.) brings to dispute resolution at JAMS more than 45 years of legal experience as JAMS neutral, judge, and trial lawyer. He served 22 years on the Thurston County Superior Court, retiring in 2013 with a statewide reputation as a jurist committed to hard work and intellectual curiosity in all matters related to law and justice. He joined JAMS with the same commitment, and brings an engaged, evaluative approach to his practice as a mediator, arbitrator, and discovery master.

On the court, Judge McPhee focused on civil litigation. His bench trial experience encompassed every aspect of civil law. He presided over class actions involving state and local governments, hundreds of asbestos cases, complex discovery issues before and after e-discovery, and many constitutional challenges. He was a trial lawyer in private practice for 20 years, trying cases in Federal Court and in nearly every county in western Washington. His wide experience included successful trials ranging from shopping center construction to first degree murder to million dollar railroad crossing cases.

Judge McPhee has a career-spanning commitment to negotiation and mediation. As judge, he required dispute resolution in all civil cases, and has conducted more than 300 settlement negotiations; as trial lawyer, he was an experienced and successful negotiator.

ADR Experience and Qualifications

- Twenty two years of experience serving as a judge on the Thurston County Superior Court
- Over 43 years of legal experience, including 21 years as a trial lawyer
- Consistently recognized as a top rated judge by practicing attorneys. WSAJ Judge of the Year, 2013.

Representative Matters and Experience

- **Arbitration**

- Judge McPhee serves as an arbitrator in all types of cases listed in the categories below. His experience as arbitrator is included for each category immediately following his mediation experience. Judge McPhee has developed arbitration forms and procedures designed to make arbitrations efficient and cost effective tools for just and speedy resolution of disputes

- **Business/Commercial**

- Mediated shareholder dispute between engineering firm and engineers whose companies had merged, regarding issues of payment and quality of work done
- Mediated dispute among partnership groups for largest supplier of electronic equipment to Alaska fishing and crabbing industry. Claims involved failure to account, fraud, and money laundering
- Mediated cases involving dissolution and liquidation of closely held corporations, including sub-S liabilities and buyouts – e.g., dissolution of a tech startup, involving issues of distribution of partially finished intellectual properties
- Mediated claim for years of fraud and misappropriation involving auto dealer's accounting and inventory records
- Mediated claim for breach of distribution contract between manufacturer of environmental cleaning products and west coast distributor
- Mediated claim for recovery of fraudulent loan fees related to a \$24 million loan from foreign lending institution
- Arbitrated breach of contract claim against auto dealer group involving stock options and bonuses
- Arbitrated claims for minority shareholder oppression, breach of contract, breach of employment agreement arising out merger of two regional electrical contractors
- Arbitrated claims against for-profit university for violation of Consumer Protection Act and breach of contract to provide an advanced degree education. This was the first arbitration of more than 20 similar cases, all of which settled a short time later
- As judge, decided legions of cases involving business regulation, licensing, and taxation in addition to private business and commercial disputes

- **Class Action/Mass Tort**

- Mediated class action against national health care provider for bill collection practices. Three mediation sessions over 10 month period; settled for \$7.5 million
- As judge, conducted trial of 7,000 members in two classes against DSHS for breach of contract and Medicaid standards. Concurrent bench and jury trial resulted in judgment exceeding \$50 million
- As judge, presided over landfill odor toxic tort class action. Settlement on eve of trial followed by long process of resolving competing claims of hundreds of class members. Worked with experts to develop claim classifications; litigated some class claims, and resolved all others by settlement
- As judge, extensive experience (more than 10 cases) adjudicating class action certification actions
- As judge, presided over hundreds of asbestosis and mesothelioma first party and industrial insurance subrogation claims over a three-year period. Worked with lead counsel to develop process for expeditiously resolving legal and evidentiary issues, then moving to a negotiated settlement track

- **Construction**

- Mediated claims by condominium owners against architect and general contractor for water intrusion caused by design and construction defects
- Mediated claim by water district against city for negligent design/construction of storm water containment facility
- Mediated claim for trespass of water onto a golf course; contractor did work for salmon habitat restoration that caused golf course to flood during storms, rendering the course unusable
- Mediated dispute over construction of high value home and associated structures involving counterclaims for specific performance and damages
- Mediated dispute over extensive remodel of Lake Washington home, including issues of planning and performance of construction
- Mediated construction lien dispute between general contractor and subcontractor over non-payment of supplier and failure to indemnify

- Mediated dispute over construction of a cutting edge "green" residence on Puget Sound, relating to green construction practices and effectiveness of green features
- Mediated dispute between rental owner and general contractor over extensive remodel involving ADA compliance requirements
- Mediated dispute between adjoining property owners over construction of large concrete retaining wall on commercial property with an easement
- Mediated dispute over construction of an access road in violation of county permits. Dispute involved rights to vacated railroad right of way
- As judge, adjudicated numerous bidding, award, and performance claims involving public works construction contracts with the Departments of Transportation, General Administration, and Social and Health Services
- As judge, adjudicated claims by commercial tenants against general contractor for toxic mold
- Arbitration counsel for owner/developer in an arbitration related to construction defects in Hawk's Prairie (Olympia) shopping mall; claims included more than 10 discrete items of breach and violation of construction standards
- **Employment**
 - Mediated discrimination claim based on sexual orientation against a public entity
 - Mediated claim by engineer against large employer for hostile work environment, retaliation and stress induced permanent disability
 - Mediated claim by medical lab technician against national laboratory chain for race discrimination
 - Mediation claim by hearing impaired employee for failure to accommodate and discrimination based on disability
 - Mediated claim of physician for breach of employment contract by regional health care provider; substantial issues over ERISA retirement benefits and wage and hour claims
 - Mediated multi-million dollar wage claim by business manager against mortgage lender for failure to pay bonuses and breach of contract. Extensive counterclaims
 - Arbitrated wage claim (bonuses exceeding \$1,000,000) brought by general manager of auto dealership
 - Arbitrated (as statutory hearing officer) in sexual orientation discrimination case brought by a teacher against a school district
 - Arbitrated (as statutory hearing officer) in teacher termination matter regarding claims of inappropriate language around students and discipline of students
 - As judge, considerable experience in all types of discrimination, wrongful discharge, whistle blower retaliation, and failure to accommodate cases. Very experienced in *McDonald Douglas* burden shifting analysis
- **Environmental/Natural Resources**
 - Mediated claim for wrongful taking of shellfish and trespass on state owned tidelands
 - Mediated dispute arising out of extensive trade of timber parcels between DNR and private timberland owners. Mediation successfully concluded after 16 months of effort
 - Mediated dispute between successor owners of a Superfund cleanup site on Duwamish waterway
 - As judge sitting at the state capitol, extensive experience adjudicating agency actions under the State Environment Protection Act, the Growth Management Act, the Shorelines Management Act and the Forest Protection Act
 - As judge, adjudicated two matters under the Model Toxics Control Act (MTCA); adjudicated LUPA actions involving both private and public interests
 - As judge, decided a series of challenges to forest practice rules on state and privately owned forest land over a span of many years. All decisions of the Court were affirmed on appeal. The cases included:
 - *Northwest Forest Cases. Dept. of Wildlife v. Dept. of Natural Resources / Washington Forest Protection Assoc.* – TC 93-2-00103-4. A court conducted review of the Washington Spotted Owl recovery rules. Conducted a lengthy trial on the rule making record. The decision was not appealed.
 - *NW Ecosystem – N.W. Ecosystem Alliance v. Forest Practices Board*, TC 98-2-02392-6
 - *ALPS 1 – Alpine Lakes Protection Society v. Dept. of Ecology*, TC 03-2-01681-8
 - *ALPS 2 – Alpine Lakes Protection Society v. Forest Practices Board*, TC 03-2-00717-7
 - *ALPS 3 – DNR / The Mountaineers / Plum Creek Timber v. Forest Practices Board*, TC 02-2-00604-1.
- **Estates/Trust**
 - Mediated dispute between son and stepmother over insurance proceeds of deceased father/former spouse

- Mediated claim by successor trustee and beneficiaries against original trustee for breach of fiduciary duties regarding several trusts and highly disputed fact pattern
- Mediated claim involving undue influence between estranged children of decedent and alleged caregiver
- Mediated claims among children and surviving second spouse arising out of distributions from several vertical trusts
- Mediated dispute between partner of decedent from committed intimate relationship and sister (residual beneficiary under the will); decedent was a coin dealer and collected firearms. Resolved at mediation but then arbitrated dispute over whether the IRA value should be included in the settlement
- Arbitrated ownership rights to properties located in Washington and related to a payday loan business; properties were claimed by various non-profit trusts and the estate of the trustor, who had been convicted of fraud related to the loan business and had fled to Mexico
- Judge McPhee served two years as estates/trusts and guardianship hearings judge in Thurston County. He is a past member of the Superior Court Judges Association Guardianship and Probate Committee and chaired two work groups for court improvement in those subjects
- **Government/Public Agencies**
 - Mediated claim by telecommunications company for excise tax refund on revenue received from an interstate ISP
 - Mediated dispute between State Agency and Port over ownership of intensively developed property and the right to share in rental income; dispute had existed since 1930s, with numerous prior attempts at settlement
 - Mediated dispute between Hospital District and State Agency regarding classification of land use for taxing purposes
 - Mediated dispute between regional energy company and county over property taxes, exemptions and property valuation
 - Mediated penalty phase of Public Records Act case involving citizen and Public Utility
 - Mediated amount of penalty in action brought by Public Disclosure Commission against national trade organization for misleading political advertisements
 - Mediated claim for damages exceeding \$1.5 million brought by private timberland owner against State Agency arising out of trade of hundreds of properties statewide, including misrepresenting restrictions on a parcel in the Columbia River Gorge
 - Mediated claim by Attorney General's Office against a national business accused of operating a scam business selling real estate information to Washington residents. The claim for penalties exceeded \$3 million
 - Mediated tort claims brought by claimants against various public agencies for employment discrimination, negligent training and supervision of case workers, wrongful (negligent) harvesting of marine resources, and trespassing
 - Mediated public records dispute between County and Private Landowner regarding use of vacant land next to Landowner's property
 - Mediated dispute between State and manufacturing association regarding funding for an initiative
 - Mediated public records dispute between State and individuals regarding lead exposure while working on a remodel project of a gun dealer
 - Arbitrated dispute concerning claims for exemption in Public Records Act case brought by motorcycle club association against a City
 - Judicial Experience – representative cases
 - *Evergreen Freedom Foundation v. Washington Education Association*. Claim brought against WEA for campaign finance, reporting, and contribution violations of state and federal law. After a long, contentious bench trial, judgment was entered and was affirmed on appeal by State Supreme Court
 - *Evergreen Freedom Foundation v. Washington Education Association*. Claim brought against WEA for campaign finance, reporting, and contribution violations of state and federal law. After a long, contentious bench trial, judgment was entered and was affirmed on appeal by State Supreme Court
 - *Sanders v. State of Washington*. Suit by sitting Supreme Court Justice against Washington Attorney General for violation of Public Records Act seeking \$1 million penalty. Bench trial decision was affirmed on appeal by State Supreme Court. This case is one of a myriad of cases brought under the Public Records Act and Public Disclosure Act decided by Judge McPhee
 - *School Districts' Alliance v. State of Washington*, A statewide alliance of school districts

sought judgment that the state was unconstitutionally underfunding special education. Bench trial decision was affirmed on appeal by State Supreme Court

- *North American Dealers Co-op v. Office of Insurance Commissioner*. Bench trial regarding legality of car dealers' money back guarantee program.
- Adjudicated the constitutionality of the taxing scheme for construction of Safeco Field, home of the Seattle Mariners
- Adjudicated tax refund claim brought by operators of intermodal freight operations at the Port of Seattle, involving the taxation of giant cranes at the port.
- Administered claim of negligent investment of state pension funds. Pretrial management of massive accounting records discovery issue

- **Insurance**

- Mediated insurance claim for employee embezzlement and theft. After mediating to impasse the parties accepted the mediator's proposal
- Mediated claims, cross-claims, and reservations of rights among insurance companies related to injury claims in watercraft collision
- Mediated multiparty insurance and bonding dispute among general and subcontractors including claims to pierce corporate veil
- Mediated dispute between insurance brokers over transfer of one broker's book of insurance company clients
- Arbitrations: UM/UIM claims arbitrated to conclusion on a one-day schedule

- **Personal Injury/Torts**

- Mediated claim against government entity for negligent investigation involving adults claiming they were abused while children in foster care
- Mediated claim by injured school district employee against general contractor, subcontractors, and manufacturer of defective equipment
- Mediated case of boating accident involving eight individuals with varying degrees of injury
- Mediated injury claim by incarcerated claimant against Department of Corrections for negligence and failure to care/protect
- Arbitrations: UM/UIM claims arbitrated to conclusion on a one-day schedule
- As judge, heard and decided broad range of personal injury/tort claims, including
 - Consumer strict liability torts
 - Libel
 - Federal Employers Liability Act cases
 - Toxic torts
 - First and third party insurance claims, including bad faith
 - Empty chair and contribution disputes

- **Professional Liability**

- Extensive experience as JAMS mediator and arbitrator and as judge with professional liability law involving:
 - Claims against accountants, architect/engineers, healthcare professionals, professional guardians, and real estate brokers
 - Claims against individuals, professional work groups, and hospitals
 - Claims against public officials (public duty doctrine cases)
 - Claims adjudicated include negligent acts, informed consent, failure to disclose, and violation of express warranties
 - Claims involving empty chair and contribution issues
 - Discovery issues in professional liability law, including medical privacy issues and electronically stored information
- Representative cases include:
 - Mediated claim with insurer of massage therapist accused of molesting clients; settlement involved resolution of insurer's reservation of rights based on intentional acts
 - Arbitrated (private trial judge) medical malpractice case against ER physician in wrongful death claim
 - As judge, adjudicated suit for negligent investment of state retirement funds in REITs brought by state employees retirement board against a national life insurance company. Extensive summary judgment litigation and discovery disputes involving three warehouses of documents
 - Very contentious medical malpractice suit against individual radiologists and medical groups where plaintiff's death was imminent. Court put case on a fast track to resolve significant liability and evidence issues so that parties could negotiate while plaintiff was alive. The goal

was accomplished and settlement concluded during plaintiff's life

- **Discovery Master**

- Judge McPhee has a developing expertise in issues related to discovery of electronically stored information. He is a member of The Sedona Conference Working Group 1 (ESI) and regularly attends the TSC Institute training. He is a fellow in the Academy of Court Appointed Masters. Judge McPhee has lectured on discovery issues and ESI to the Superior Court Judges Association, the Office of the Attorney General, county and state bar association sponsored CLEs, and for-profit organizations (NBI and The Knowledge Group). He has been appointed discovery master in King, Pierce, and Thurston counties.
- Representative appointments:
 - Discovery master in multi-party medical malpractice case involving out of control discovery disputes and motion practice. Instituted a very specific and even-handed discovery plan
 - Discovery master in Public Records Act cases to determine application of claimed exemptions by in camera examination
 - Discovery master in insurance bad faith claim for in camera examination of plaintiff's attorney files and work product in response to discovery demands by defendant insurance company.

Honors, Memberships, and Professional Activities

- Presenter, Mediation Ethics, Washington Defense Trial Lawyers CLE, 2014
- Named Judge of the Year, Washington State Association for Justice, 2013
- Member, The Sedona Conference, Working Group 1: Electronic Document Retention and Production
- Former Trustee, Superior Court Judges' Association
- Former Chair, Board for Judicial Administration Litigation Time Standards Task Force
- Former Chair, SCJA Guardianship Tools for Court Workgroup
- Former Member, Family and Juvenile Court Improvement Program Steering Committee
- Former Member, Justice in Jeopardy Implementation Committee
- Former Member, SCJA Judicial Education Committee
- Former Member, SCJA Guardianship and Probate Committee
- Past President, Thurston County Bar Association
- Past President, Thurston Youth Services
- Former Member, WSBA Education Committee
- Presenter, Electronically Stored Information and Discovery, AGO CLE, 2012
- Presenter, Judicial Review of APA Cases, AGO CLE, 2010
- Presenter, Dependency, FCIGP, 2009
- Presenter, Guardianship Case Management, SCJA CJE and Court Administrators Conference, 2009
- Presenter, Lincoln on Professionalism, WSBA CLE, 2009
- Presenter, Unified Family Court Practice, Family Court Improvement Grant Program, 2007
- Presenter, Civility & Professionalism in the Courtroom, WSBA Young Lawyers CLE, 2005
- Presenter, Motion Practice, TCBA CLE, 2005
- Presenter, Public Disclosure Act, AGO CLE, 2003
- Presenter, Trial Briefs, WSBA Young Lawyers CLE, 2002
- Presenter, Pre-trial Preparation, WSBA Young Lawyers CLE, 2001

Background and Education

- Judge, Superior Court, Thurston County, WA, 1990-2012
 - Presiding Judge, Thurston County, two terms
- Trial lawyer, Olympia private practice, 1973-1990
- Trial lawyer, Washington Attorney General's Office, 1969-1973
- J.D., University of Oregon, 1969
- B.A., Political Science, Washington State University, 1966

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- **Judicial Dispute Resolution** - <http://www.jdrllc.com> -

About

Posted By *Admin* On August 20, 2010 @ 4:53 pm In | [Comments Disabled](#)

Judicial Dispute Resolution, LLC (JDR) provides efficient and effective private resolution of civil disputes on a private basis. Our panel of former judicial officers is devoted to helping you reach mutually acceptable resolutions of disputes. Together, JDR's private panelists bring a wealth of experience and insight to the dispute resolution process gained through their years in private practice, in serving as judges in the Washington State Court system and in full-time dispute resolution.

JDR offers:

A neutral environment: We provide the facilities necessary to achieve successful resolution of all civil disputes. We maintain comfortably-appointed mediation rooms and a large, formal trial/arbitration hearing room with two adjoining rooms for witness preparation.

Confidentiality: We deliver confidential, creative and timely arbitration and mediation solutions.

A personal touch: Our panelists have the breadth of experience and personality to fit any case.

Special services: Other JDR services include hearing officer, mock trial, appellate consultation and special master.

JDR Arbitration Rules: When the parties to an arbitration have not agreed on the rules to be applied, we offer our own set of arbitration rules that are consistent with Washington Court Rules.

Internet Access: All mediation and arbitration rooms are equipped with Internet access. A centrally located PC with internet access is available to our visitors.

Amenities: We offer complimentary coffee, cocoa, soda, juice, bottled water, fresh fruit and vegetables, and snacks.



CHARLES S. BURDELL JR.
Former King County
Superior Court Judge



PARIS K. KALLAS
Former King County
Superior Court Judge



GEORGE FINKLE
Former King County
Superior Court Judge



LARRY A. JORDAN
Former King County
Superior Court Judge

EXPERIENCE TENACITY JUDGMENT

- All panelists are former Washington State Superior Court judges
- Mediation, arbitration, special master, hearing officer and litigation consultation
- Talented and responsive staff
- Well-appointed arbitration courtroom



STEVE SCOTT
Former King County
Superior Court Judge



LINDA LAU
Former Appellate and
Superior Court Judge



BRUCE HELLER
Former King County
Superior Court Judge



PALMER ROBINSON
Former King County
Superior Court Judge



- Judicial Dispute Resolution - <http://www.jdrllc.com> -

Seattle Arbitration, George Finkle

Posted By *Admin* On August 25, 2010 @ 3:58 pm In | [Comments Disabled](#)

Judge Finkle was appointed to the King County Superior Court in December 1989 and served until October 1999, when he joined JDR. Before taking the bench, Judge Finkle was a partner in Burns Schneiderman Finkle, Deputy Director of the Seattle-King County Public Defender, an associate at Preston Thorgrimson, and law clerk to the Hon. Jerome Farris.

Experience & Specialties

Since joining JDR in 1999, Judge Finkle has successfully arbitrated and mediated hundreds of state and federal civil cases. His ADR experience includes modest-sized and large complex cases involving contracts, employment, International, insurance, maritime, healthcare, agriculture, high technology, patent/licensing/trademark, real estate, securities, shareholders, construction, family law, partnership, consumer, and class actions. Judge Finkle has served as Special Master in dozens of state and federal cases, has consulted in litigation, and has supervised elections.

While a member of the Superior Court bench, Judge Finkle's diverse trial docket included State v. American Tobacco (the multi-billion dollar lead case in the national tobacco litigation), as well as hundreds of other complex and straightforward civil cases.

Judge Finkle has been a frequent speaker at Continuing Legal Education seminars covering topics including effective arbitration, mediation, and trial practice.

In October of 2010, Judge Finkle was a visiting Professor of Law at the Masaryk University Law Faculty in the Czech Republic.

Special Honors & Memberships

Legal

Fellow, College of Commercial Arbitrators

Chief Civil Judge, King County Superior Court

Volunteer Mediator, Seattle Police / Citizen disputes and King County Superior Court

Member, Washington State Board of Bar Examiners

Commissioner, Washington State Sentencing Guidelines Commission

Other

Associated Grocers Board of Directors / Chair, Executive Committee

Volunteer Home Builder and Family Advocate, Habitat for Humanity

Volunteer phone worker, Seattle-King County Crisis Clinic

Volunteer English teacher for refugees, International Rescue Committee

Education

Harvard Law School, J.D. 1973

National Judicial College, Graduate 1990

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Seattle Mediation, Paris K. Kallas

Posted By *Admin* On August 25, 2010 @ 4:03 pm In | [Comments Disabled](#)

Judge Paris K. Kallas was appointed to the King County Superior Court in 2001 by Governor Gary Locke and served until 2010. Judge Kallas presided over the full range of civil and criminal cases, including complex litigation and high-profile matters. She served terms as Chief Civil Judge, Chief Asbestos Judge and also served on the Court's Executive Committee. From 1996-2001, she served as a Commissioner of Division I of the Washington State Court of Appeals. While practicing law, she specialized in appellate practice, criminal defense, and general tort litigation.

Experience & Specialties

As a mediator, arbitrator, and special master, Judge Kallas handles personal injury, employment, discrimination, asbestos, maritime, dissolution, insurance coverage and real property, business, and commercial disputes. She frequently speaks at Continuing Legal Education Seminars on topics including effective mediation practices and negotiation strategies, ethics, and civil trial practice.

Memberships and Honors

Judicial:

Chief Civil Judge, King County Superior Court
Chief Asbestos Judge, King County Superior Court
Chair, Ex Parte and Probate Committee, King County Superior Court
Chair, Local Rules Committee, King County Superior Court

Legal:

2019, 2018, 2017, 2016, 2015, 2014 Washington Super Lawyer
Member, American College of Civil Trial Mediators
Member, National Academy of Distinguished Neutrals
Member, Maritime Law Association of the United States
Board of Directors Member, Foundation for Washington State Courts
Member, William L. Dwyer Inn, American Inns of Court
Vanguard Award, King County WA Women Lawyers, 2012
Member, Washington State Bar Association 1981-Present

Past Memberships:

Board of Directors Member, Dispute Resolution Center of King County
Member, King County Boys and Girls Club Corporate Board of Directors
Member, Seattle Academy of Arts and Sciences Board of Trustees
Member, Community Day School Association Board of Directors

Education

J.D., University of Puget Sound School of Law (now Seattle University), 1981
B.A., St. Olaf College, Northfield, Minnesota, 1978

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Dispute Resolution Seattle, Steve Scott

Posted By *Admin* On August 25, 2010 @ 4:00 pm In | [Comments Disabled](#)

Judge Scott was appointed to the King County Superior Court bench by Governor Gardner in December, 1987, and served until January, 2005. Before taking the bench, he practiced law with the firm of Kleist, Davis and Arnold. He has served as the Litigation Coordinator and Acting Director of Evergreen Legal Services and as the Director of the Institutional Legal Services Project. He was law clerk to the Honorable Jacob Tanzer.

Experience & Specialties

In his seventeen years on the Superior Court bench, Judge Scott presided over a wide range of commercial, personal injury, domestic relations, real property, employment, medical malpractice, construction, and other civil litigation. He has conducted hundreds of [mediations](#) in the same wide range of cases.

While practicing law, Judge Scott specialized in the areas of civil rights, employment, personal injury, and criminal defense.

Judge Scott is frequently invited to speak at Continuing Legal Education seminars regarding motions and trial practice in the Superior Court. He has taught law practice as an adjunct faculty member at the University of Washington Law School and trial advocacy skills nationally for the Legal Services Corporation.

Special Honors & Memberships

Judicial:

Consistently rated one of the top judges in King County Judicial Evaluation Surveys between 1988 and 2004.

Chair, Civil Rules Committee

Chair, Interpreter Committee

Chair, Mental Illness Committee

Chair, Facilities and Construction Committee

Other:

Commissioner, Sentencing Guidelines Commission

President, Board of Directors, United Methodist Temple Daycare

Basketball Coach, Rainier Community Center, Lakeside Middle School, and Bellevue High School Girls Varsity

Education

B.A. (with great distinction), Stanford University, 1970

J.D., University of Pennsylvania Law School, 1974

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AGENDA REPORT

TO: Port Commission

FROM: Lucinda J. Luke, Port Counsel

MEETING DATE: August 27, 2019

AGENDA ITEM: Resolution 2019-18, Enactment of Recommended Action for Commissioner Moak

- I. REFERENCE(S):** Independent legal counsel Tara L. Parker's August 6, 2019 Report of Independent Investigation Recommended Action; Port Legal Counsel's August 6, 2019 Recommended Action Memorandum (attached); and, Verbal Reprimand (attached).
- II. FISCAL IMPACT:** Fees and costs for the investigative process to August 13, 2019 were \$52,000, not including Port CEO and staff time. Fees and costs associated with training to be conducted with Commissioner Moak are to be borne by Commissioner Moak pursuant to the Recommended Action. Additional fiscal impact is cost of publication and other fees and costs incurred to fully enact the Recommended Action accepted by Commissioner Moak. Although difficult to estimate, I believe the Port will incur an additional fiscal impact of \$10,000.
- III. DISCUSSION:** In the August 13, 2019 Commission meeting, Commissioner Tom Moak reported that he accepted the Recommended Action resulting from Tara L. Parker's August 6, 2019 Report of Independent Investigation which found that Commissioner Moak violated the Port Rule requiring civil and respectful treatment of others on one occasion.

Pursuant to the Port Legal Counsel's August 6, 2019 Recommended Action memorandum, the recommended actions for Commissioner Moak's violation are:

- A. Verbal reprimand reported in Commission meeting minutes.
- B. Satisfactory completion by Commissioner Moak of training identified by Port Counsel covering the following topics:
 - professional communication skills
 - Port Commission Rules and Policies

Costs and fees for all such training shall be paid by Commissioner Moak.

C. Cooperative participation in team building activities and trainings with Port CEO and staff. Such activities shall be identified by Port Counsel with the assistance of consultants, Port CEO and staff.

D. Publication of the above sanctions in the Tri-City Herald.

The verbal reprimand is attached to the proposed Resolution 2019-18 and should be read into the record today. Training and team building steps will be conducted over time as directed and scheduled by Port counsel.

IV. COUNSEL RECOMMENDATION: Adopt Resolution 2019-18.

V. ACTION REQUESTED OF COMMISSION:

***Motion:** I move approval of Resolution 2019-18 adopting the Recommended Action of Port Counsel for Commissioner Moak's violation of the Port Rule requiring civil and respectful treatment of others on one occasion.*

Memo

TO: Port of Kennewick Board of Commissioners and Chief Executive Officer

FROM: Lucinda J. Luke, Port Counsel

DATE: August 6, 2019

RE: Recommended Action

I. OVERVIEW

Incorporated herein by reference is the Report of Independent Investigation dated August 6, 2019 conducted by independent legal counsel, Tara L. Parker (the "Report"). As set forth in the Report, Ms. Parker investigated misconduct allegations against Port of Kennewick Commissioner Don Barnes and Commissioner Thomas Moak. The misconduct allegations were received in a complaint submitted on March 25, 2019 (the "Complaint"). The Report sets forth Ms. Parker's determination and the basis for her determination. This memo sets forth the recommended action resulting from the substantiated misconduct.

At pages 17 and 18 of the Report, Ms. Parker sets forth her determination that certain of the allegations of misconduct reported in the Complaint were substantiated, as follows:

1. Commissioner Barnes did violate the Port Rules and Policies when he called DPZ and the SAO regarding business matters.
2. Commissioner Barnes did create a hostile work environment for Port CEO in violation of Port policies.
3. Commissioner Moak violated the Port Rule requiring civil and respectful treatment of others on one occasion.

II. SANCTIONS AVAILABLE UNDER PORT COMMISSION RULES

Section 5.5 of the Commission Rules of Policy and Procedure (see Exhibit 3 of the Report for reference to the revised Section 5 adopted by the Commission on June 11, 2019) states that if Port counsel finds misconduct and the complaint substantiated, a report to Executive Director and the Commission shall set forth the basis for the determination and a recommended action.

The following Port Rules set forth the sanctions that may be levied as the result of a substantiated complaint of misconduct:

Section 5.9 of the Port Rules states:

Censure and/or reprimand may be invoked with respect to Commissioner misconduct, in addition to reassignment of committee assignments and other actions.

Section 5.10 of the Port Rules states:

Unless otherwise determined by the commission or neutral in a particular matter, it shall be standard procedure to publish, in a manner deemed appropriate by the Commission or neutral, the fact of any sanction.

Section 5.11 of the Port Rules states:

Any action taken by the Commission or neutral shall not prevent other legal action that may be available under the law. The Port shall not indemnify or defend any Commissioner charged with misconduct, except as otherwise provided under Section 18.

III. RECOMMENDED ACTION

As referenced above, Ms. Parker has substantiated certain allegations of misconduct by Commissioner Barnes and Commissioner Moak. Pursuant to the Port Rules, the following is the recommended action for each of the substantiated allegations:

1. Commissioner Barnes did violate the Port Rules and Policies when he called DPZ and the SAO regarding business matters.

The recommended actions for this violation by Commissioner Barnes is:

- A. Formal public censure by resolution adopted by the Commission.
- B. Satisfactory completion of training identified by Port Counsel covering topics including
 - roles and responsibilities of a Port Commissioner
 - Port of Kennewick Commission Rules and Policies

Commissioner Barnes shall be personally responsible for any cost or fee associated with the training.

- C. Publication of the above sanctions in the Tri-City Herald.

2. Commissioner Barnes did create a hostile work environment for Port CEO in violation of Port policies.

Because of its serious nature and broad impact, there are several recommended actions resulting from this substantiated allegation of misconduct, as follows:

- A. Formal public censure in the form of a resolution adopted by the Commission.
- B. Satisfactory completion by Commissioner Barnes of training identified by Port Counsel covering the following topics:
- understanding, correcting, and preventing hostile work environment behaviors
 - professional communication skills
 - roles and responsibilities of a Port Commissioner
 - Port of Kennewick Commission Rules and Policies

Costs and fees for all such training shall be paid by Commissioner Barnes.

- C. Cooperative participation in team building activities and trainings with Port CEO and staff. Such activities shall be identified by Port Counsel with the assistance of outside consultants, Port CEO and staff.

- D. Publication of the above sanctions in the Tri-City Herald.

3. Commissioner Moak violated the Port Rule requiring civil and respectful treatment of others on one occasion.

The recommended action for this violation is:

- A. Verbal reprimand reported in Commission meeting minutes.
- B. Satisfactory completion by Commissioner Moak of training identified by Port Counsel covering the following topics:
- professional communication skills
 - Port Commission Rules and Policies

Costs and fees for all such training shall be paid by Commissioner Moak.

C. Cooperative participation in team building activities and trainings with Port CEO and staff. Such activities shall be identified by Port Counsel with the assistance of consultants, Port CEO and staff.

D. Publication of the above sanctions in the Tri-City Herald.

PORT OF KENNEWICK

Resolution No. 2019-18

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK ENACTING RECOMMENDED ACTION FOR COMMISSIONER MOAK

WHEREAS, on March 25, 2019 a citizen complaint against Commissioners Moak and Barnes was received by the Port; and

WHEREAS, an investigation was conducted regarding the complaint by independent legal counsel, Tara L. Parker; and,

WHEREAS, Tara L. Parker issued her Report of Independent Investigation on August 6, 2019 wherein she found that Commissioner Tom Moak violated the Port Rule requiring civil and respectful treatment of others on one occasion; and,

WHEREAS, in the August 13, 2019 Commission meeting, Tara L. Parker's August 6, 2019 Report of Independent Investigation findings were reported and the Recommended Action resulting from Ms. Parker's findings was also reported; and,

WHEREAS, Commissioner Tom Moak stated that he would accept the Recommended Action; and,

WHEREAS, Pursuant to the Port Legal Counsel's August 6, 2019 Recommended Action memorandum, the recommended actions for Commissioner Moak's violation are:

- A. Verbal reprimand reported in Commission meeting minutes.
- B. Satisfactory completion by Commissioner Moak of training identified by Port Counsel covering the following topics:

- professional communication skills
- Port Commission Rules and Policies

Costs and fees for all such training shall be paid by Commissioner Moak.

C. Cooperative participation in team building activities and trainings with Port CEO and staff. Such activities shall be identified by Port Counsel with the assistance of consultants, Port CEO and staff.

D. Publication of the above sanctions in the Tri-City Herald.

Resolution No. 2019-18
Page 2

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Board of Commissioners of the Port of Kennewick hereby adopts and initiates enactment of the above-referenced recommended actions for Commissioner Moak's violation, including reading the attached verbal reprimand into the minutes of today's Commission meeting.

BE IT FURTHER RESOLVED that all actions by Port Counsel and port employees in furtherance of enactment and completion of the recommended actions for Commissioner Moak are ratified and approved; and further, the Port Counsel is authorized to take all actions necessary in furtherance hereof.

ADOPTED by the Board of Commissioners of the Port of Kennewick on the 27th day of August, 2019.

PORT of KENNEWICK
BOARD of COMMISSIONERS

By: _____
THOMAS MOAK, *President*

By: _____
DON BARNES, *Vice President*

By: _____
SKIP NOVAKOVICH, *Secretary*

VERBAL REPRIMAND OF COMMISSION TOM MOAK

On March 25, 2019 a citizen complaint against Commissioners Moak and Barnes was received by the Port and an investigation of the complaint was conducted by independent legal counsel, Tara L. Parker.

Tara L. Parker issued her Report of Independent Investigation on August 6, 2019 wherein she found that Commissioner Tom Moak violated the Port Rule requiring civil and respectful treatment of others on one occasion. More specifically she found that in the February 19, 2019 Commission meeting executive session Commissioner Moak yelled at Port CEO "I blame you" in reference to the Ivy property matter.

Commissioner Moak is hereby reprimanded for yelling at the Port CEO which action violated the Port Rule requiring civil and respectful treatment of others.