

COA No. 342026-III

FILED

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APR 06 2017

**COURT OF APPEALS
STATE OF WASHINGTON
(Div. III)**

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

FILED
APR 11 2017
WASHINGTON STATE
SUPREME COURT

IN RE:

BOTANY UNLIMITED DESIGN & SUPPLY, LLC

Appellant-Petitioner,

SUPERIOR COURT No. 15-2-508604
FRANKLIN COUNTY
Hon. Cameron Mitchell

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner Botany Unlimited Design and Supply, LLC, (Botany) the appellant below, is a limited liability corporation in the State of Washington.

B. COURT OF APPEALS DECISION

Botany seeks review of Division Three’s published decision, *In re: BOTANY UNLIMITED DESIGN AND SUPPLY, LLC*, where the Court of Appeals affirmed the trial court’s dismissal of Botany’s suit due to a lack of jurisdiction. *See* Appendix A. This timely petition followed.

C. SUBSTANTIAL QUESTION PRESENTED FOR REVIEW

Botany raises a substantial question for this Court: whether “strict compliance” or “substantial compliance” applies to the caption and title of a petition for judicial review. Specifically:

Does substantial compliance for the contents of a petition for review extend to the *title* of the document where in all other respects the

document met the content required under
RCW 34.05.542 and the document was
otherwise timely served and filed?

D. STATEMENT OF THE CASE & PROCEEDINGS

a. Proceedings.

This petition arises from the LCB's final decision to deny the renewal of Botany's license to produce and process cannabis.

The final agency ruling issued on September 16, 2015. *See* Appendix B.

Botany sought judicial review and timely filed a petition for review in the Franklin County Superior Court on September 22, 2015. Botany failed to properly serve the petition via mail or fax, and its email service was not adequate under the rules.

Botany served on all parties and filed in the Franklin County Superior Court an emergency motion for relief on the same day it filed its petition. Slip Op. at 2-3.

The LCB objected to the failed service of the petition on

multiple grounds. On March 16, 2016, the Superior Court held that it had no jurisdiction under RCW 34.05.542 due to two defects: that (a) the attorney general who handled the administrative phase was not the “attorney of record” under RCW 34.05.542(6); and (b) the service upon the Attorney General’s office was defective due to the method of service. CP 302, 303; Slip Op. at 3.

Botany sought further judicial review in the Court of Appeals. The Court of Appeals reversed the lower court on the first issue (whether the Attorney General who handled the administrative phase was the statutory “attorney of record”); it upheld the lower court’s denial on the question of jurisdiction, holding that the timely filed and served motion was not a proper Petition for Review. Slip Op. at 6, 11.

b. Facts.

In 2013, Botany sought a license under the then-named Liquor Control Board, now Liquor and Cannabis Board, to produce and process cannabis under the Washington’s I-502

provision. Botany disclosed in its initial application that one of its owners had a prior federal conviction for conspiracy to manufacture marijuana within the past 10 years, a potential bar to obtaining a license. Slip Op. at 2. Provisions under the WACs, however, provide that the LCB could exercise its discretion to waive the bar against prior felons holding a license. WAC 314-55-040(3)(b). The LCB issued the license to Botany in 2014, notwithstanding Botany's disclosure of a co-owner's prior felony. The Board did not state any contingency with Botany's license or concern over the disclosed prior felony. CP 8.

The license expired after one year, and Botany sought re-licensing in December 2014. The renewal was denied due to the Board's confirmation in early 2015 that the co-owner indeed had a conviction for federal conspiracy to manufacture marijuana. Botany began the administrative appeals process. Slip Op. at 2. The LCB's final order denied Botany re-licensing, based on its confirmation of the previously disclosed criminal history, giving no legal effect to the LCB's previous

action the year before. The denial notice provided instructions for obtaining judicial review:

Judicial Review. Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement.

Appendix B at 3. The notice stated that the timing and process for service was controlled by RCW 34.05.

That statute's pertinent parts follow:

Subject to other requirements of this chapter or of another statute: * * *

(2) A petition for judicial review of an order shall be filed with the court and served on the agency, the office of the attorney general, and all parties of record within thirty days after service of the final order.

(3) A petition for judicial review of agency action other than the adoption of a rule or the entry of an order is not timely unless filed with the court and served on the agency, the office of the attorney general, and all other parties of record within thirty days after the agency action, * * * .

(6) For purposes of this section, service upon the attorney of record of any agency or party of record constitutes service upon the agency or party of record.

On September 23, 2015, Botany timely filed a petition for review in the Franklin County Superior Court. CP 48-102.

Botany failed to properly serve the petition via mail or fax; its email service was not adequate under the rules of civil procedure to obtain jurisdiction in the superior court.

Also on September 23, 2015, Botany filed an emergency motion for relief in the Franklin County Superior Court, and served the motion for relief on the Attorney General's counsel of record. CP 1-3, CP 286-87 § 12. It is uncontested that Botany's motion contained each of the elements required in a petition for review, as set forth in RCW 34.05.546.

A petition for review must set forth:

- (1) The name and mailing address of the petitioner;
- (2) The name and mailing address of the petitioner's attorney, if any;
- (3) The name and mailing address of the agency whose action is at issue;
- (4) Identification of the agency action at issue, together with a duplicate copy, summary, or brief description of the agency action;

- (5) Identification of persons who were parties in any adjudicative proceedings that led to the agency action;
- (6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;
- (7) The petitioner's reasons for believing that relief should be granted; and
- (8) A request for relief, specifying the type and extent of relief requested.

See CP 1-3, 286-87 (copy of Botany's motion), and slip op. at 8-9.

Each of these items is met within the four corners of the Motion and its attached exhibits.

1. Name and address of petitioner, see CP 14 and 38.
2. Name and address of counsel for petitioner, see CP 38.
3. Name and address of agency, see CP 12.
4. Identification of agency action along with a copy or brief description of agency action, see CP 14 (copy) and CP (38) (brief description)
5. Identification of parties to adjudicative proceedings,

see CP 7-11, CP 14-15.

6. Facts supporting reversal, see CP 39-44.
7. Statements supporting the basis for relief, see CP 39-44.
8. A statement of the relief requested, CP 45-46 (stay until review by court).

The LCB objected to the service of the petition on multiple grounds.

On March 16, 2016, the Superior Court held that it had no jurisdiction under RCW 34.05.542 due to two defects: that (a) the attorney general who handled the administrative phase was not the “attorney of record” under RCW 34.05.542(6); and (b) the service upon the Attorney General’s office was defective due to the method of service under RCW 34.05.542(2). Slip Op. at 4. Botany appealed to Division III.

For purposes of this Petition, the Court of Appeals noted the issue as follows: may service of a motion to stay substitute for service of a petition for review when the contents of the motion

to stay meet all the requirements of a petition for review?

The Court of Appeals heard argument and issued its published decision on March 7, 2017. The Court overturned the Superior Court on the question of whether the agency-level Attorney General was the “attorney of record”, but upheld the lower court’s denial on the issue of jurisdiction. The Court held that “[s]ervice of a motion to stay is no substitute for a petition, even if it contains all the information required of a petition.” Slip Op. at 4. The basis for the appellate court’s holding was the fact that motions are permitted after the filing of a petition for review per RCW 34.05.550(2), thus the RCW 34.05.542(2)’s service language “clearly contemplates that two separate documents will be filed in those instances when emergency relief is sought.” The unstated syllogism, absent from the appellate court’s analysis, tacitly argues that because two separate documents must be filed, the motion cannot also function as a petition when it comes to service. Apologizing to Shakespeare, the lower court stated that “[s]ubstitution of a

different document is not the same as giving a different name to a rose.” Slip Op. at 10.

But the court of appeals assumed the conclusion to be proven and, in an *ipse dixit* fashion, it opined that “[l]abelling service of the wrong document as substantial compliance would render the service statute advisory rather than mandatory.” Slip Op. at 10. The lower court, however, cited no authority.

Argument

Introduction. The determination of what processes in an administrative appeal are subject to strict compliance -- and which may be met by substantial compliance -- is a matter of significant interest to the bench and bar. The statutes separately governing the content and timing of a petition direct that the document used to confer jurisdiction on the Court of Appeals contain specific elements (subject to substantial compliance). While rules governing the method and timing of service are strictly imposed, the content of a petition for review is subject only to substantial compliance. Significantly to this appeal, no

rule requires that appellants file a specifically titled document to obtain jurisdiction.

a. The contents of a petition for judicial review of an agency's final decision are controlled by statute and Botany met these elements in its Emergency Motion.

Judicial review of an agency action requires that a party timely serve a petition for review. *Diehl v. Western Washington Growth Management Bd.*, 153 Wn.2d 207, 213 (2004). The rules governing service are strict and failure to conform to the requirements deprives the superior court of jurisdiction. *Skagit Surveyors & Eng'ers LLC v. Friends of Skagit County*, 135 Wn.2d 542, 555 (1998). As the lower court noted, actual notice is insufficient to satisfy the service rules. *Id.* Substantial compliance, however, governs a petition's *contents*. "We decline to hold that strict compliance with RCW 34.05.546 is a jurisdictional requirement." *Skagit Surveyors and Eng'ers*, at 556 (applying substantial compliance test to a petition's *caption error*).

Similar to the logic employed by the court in *Skagit*, the court has held that in the context of the Land Use Petition Act (LUPA)¹, “The plain language of the ... [statute’s] provisions governs.” *Prosser Hill Coal. V. Spokane County*, 176 Wn. App. 280, 288 (2013, Div. III). In *Prosser Hill*, the court wrestled with the issue of whether a flawed caption of a pleading would strip the superior court of its appellate jurisdiction for the purposes of judicial review. *Id.* at 287. Citing the Division II opinion, *Quality Rock Products, Inc. v. Thurston County*, 126 Wn. App. 250, 265-66 (2005, Div. II), the court in *Prosser Hill* reiterated the Division II court’s holding that “where service is otherwise proper under the civil rules, a party’s [error] in the caption does not divest the superior court of jurisdiction absent demonstrated prejudice.” *Prosser Hill*, at 287.

The lower court here, however, in a significant departure from controlling law held that the contents of the petition for

¹ LUPA, like the Administrative Procedure Act, sets forth the procedure for individuals to seek judicial review.

review require that the petition be labeled “Petition for Review”

lest the requirement for a petition become “advisory”.

According to the lower court, Botany’s Emergency Motion —

notwithstanding its meeting every required element of RCW

34.05.546(1) through (8) — is not Shakespeare’s “rose by any

other name.” And the lower court’s concern that the filed

Petition was different in detail from the filed and served

Emergency Motion is a logical deadend. The Emergency

Motion stands on its own. The existence of a failed petition

does not detract from the sufficiency of the motion’s recitation

of elements under 34.05.546. Further, no demonstrable

prejudice afflicts the LCB’s ability to make its case.

Consequently, the appellate court’s hypertechnical holding,

applying a standard of strict compliance to the titling of a

document, should be reviewed by this Court.

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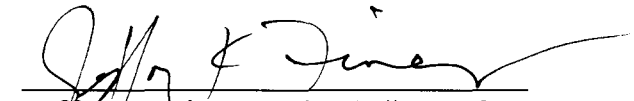
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CONCLUSION

For the reasons set forth above, Botany Unlimited respectfully asks this Court to vacate the opinion below and grant the Petition.

DATED THIS 6th day of April, 2017.

Law Offices of JEFFRY K FINER



Jeffrey K. Finer, WSBA #14610
Attorney for Botany Unlimited
Design and Supply, LLC

CERTIFICATE OF SERVICE

I, Danette Lanet, certify that on the 6th day of April, 2017, I caused the foregoing *Appellant's Petition for Review*, to be served, via electronic facsimile transmission and via USPS, postage prepaid, on the following:

Jong M. Lee
WA Attorney General's Office
PO Box 40100
Olympia, WA 98504-0100

DATED this 6th day of April, 2017.



Danette Lanet, Legal Assistant

APPENDIX A

FILED
MARCH 7, 2017
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

In the Matter of)	
)	No. 34202-6-III
BOTANY UNLIMITED DESIGN AND)	
SUPPLY, LLC, dba BOTANY)	
UNLIMITED DESIGN AND SUPPLY,)	PUBLISHED OPINION
)	
Appellant.)	

KORSMO, J. — Botany Unlimited Design and Supply (Botany) appeals from a decision dismissing its action against the Washington State Liquor and Cannabis Board (Board) for failure to serve the Board. Although we reject the Board’s claim that the attorney representing its licensing division at the administrative hearing was not an appropriate agent for service on the Board, we agree that Botany’s proper service of a motion for stay did not substitute for service of a petition for review. Accordingly, we affirm the trial court.

FACTS

Botany sought a license from the Board in 2014 to produce and process cannabis. One of its principals, Mark Gomez, disclosed that his criminal history included a 2007 guilty plea in federal court to conspiracy to manufacture more than 1,000 marijuana

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plants. The Board granted Botany a one-year license effective mid-2014 without having verified any of Gomez's disclosures.

Botany sought to renew its license in December 2014. Having now verified Gomez's criminal history, the Board denied the renewal request, noting that it would not have issued the initial license if it had verified the criminal history disclosure. Botany then began the administrative appeals process. Assistant Attorney General (AAG) Jong Lee appeared on behalf of the "Liquor and Cannabis Board" at the brief adjudicatory proceeding held before an administrative law judge.¹ The resulting initial order directed that any appeal be served on the Board's representative, Kevin McCarroll. The next level of appeal was to the Board. AAG Lee appeared on behalf of the Licensing Division of the Liquor and Cannabis Board and filed the written response to Botany's appeal. The Board's final order denying Botany relief also directed that any motion for reconsideration be served on Mr. McCarroll and also sent to Senior Assistant Attorney General Mary M. Tennyson. The notice also provided that judicial review could be sought in accordance with RCW 34.05.542. The notice did not identify any individual to whom service or other notice of judicial review should be directed.

¹ At oral argument, Mr. Lee advised this court that he did not normally work on Liquor and Cannabis Board cases, but had volunteered to assist since that division was busy with a large number of cases.

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Instead of pursuing reconsideration, Botany sought judicial review. Botany filed a petition for review in the Franklin County Superior Court of the Board's final order denying review. In conjunction, Botany also filed an emergency motion for stay of the Board's final order. Botany failed to serve the petition on the Board. It did mail a copy of the emergency motion for stay to AAG Lee and also e-mailed him a copy of the petition for review. Mr. Lee filed a notice of appearance on behalf of the Board and represented the Board at the hearing on the emergency motion. The trial court denied the stay request.

The Board did not receive a copy and was unaware that a petition for review had been filed. Therefore, the administrative record was not prepared for superior court review. When alerted to the fact that the Board had not been served, AAG Lee filed a motion to dismiss due to lack of superior court jurisdiction. Botany agreed that it had not served the petition on the Board, but argued that service of the motion on AAG Lee was the equivalent of service of the petition on the Board. The superior court dismissed the review for want of jurisdiction.

Botany appealed to this court. At Botany's request, a panel heard oral argument.

ANALYSIS

In order to obtain judicial review of any agency action, a party must serve a petition for review on the agency or the agency's attorney. The statutory service requirements are jurisdictional and quite strict. The fact that an agency has actual notice

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of a petition for judicial review will not excuse a party's failure to comply with the service requirements.

This appeal asks us to review two aspects of this requirement: (1) who constitutes the agency's attorney when judicial review has not yet commenced and no notice of appearance has been filed and (2) may service of a motion to stay substitute for service of a petition for review when the contents of the motion to stay meet all the requirements of a petition for review? We answer the first question in favor of Botany Unlimited and hold that an attorney who has consistently appeared during the underlying administrative proceedings may be served as the attorney of record on behalf of the agency. We decide the second question in favor of the agency. Service of a motion to stay is no substitute for a petition for review, even if it contains all the information required of a petition.

Service on Assistant Attorney General

In order to obtain judicial review of an agency action, a party must file a petition for review within 30 days of the final order. RCW 34.05.542(1), (2). The petitioner must file the petition with the court and serve the petition on the agency, the Office of the Attorney General, and all parties of record. RCW 34.05.542(2). Service on the attorney general and parties of record may be accomplished by use of the United States mail. RCW 34.05.542(4).

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However, an agency must be served by delivery of a copy of the petition for review to the office of the agency's director. *Id.* That requirement was softened when the legislature in 1998 amended the statute to add the provision at issue here:

For purposes of this section, service upon the attorney of record of any agency or party of record constitutes service upon the agency or party of record.

RCW 34.05.542(6). The provision was enacted by Laws of 1998, ch. 186. The final bill report summarized the purpose of the legislation: "Service on the attorney of record of any agency or party of record is sufficient to perfect jurisdiction in the superior court."²

Prior to the amendment, it was recognized that the Administrative Procedure Act, ch. 34.05 RCW, had been designed "to break with prior practice" and "therefore eliminated many of the formalities associated with the initiation of an action in superior court."

Diehl v. W. Wash. Growth Mgmt. Hr'gs Bd., 153 Wn.2d 207, 215, 103 P.3d 193 (2004).

The Board argues that AAG Lee did not represent it when he appeared on behalf of the Board's licensing division in the administrative proceedings and did not represent it at the time of service, that Ms. Tennyson was its attorney of record, and that our decision in *Cheek v. Employment Security Department*, 107 Wn. App. 79, 25 P.3d 481 (2001), compels affirming the dismissal. Botany argues that a later decision from Division One, *Ricketts v. Board of Accountancy*, 111 Wn. App. 113, 43 P.3d 548 (2002),

² FINAL B. REP. ON S.B. 6172, 55th Leg., Reg. Sess. (Wash. 1998).

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supports its view that Lee was the attorney of record. We agree with Botany that AAG Lee was an appropriate person to serve.

Cheek involved an appeal from the denial of unemployment benefits. The petition for review was filed in superior court on the last possible day, April 3, 2000. 107 Wn. App. at 82. A copy of the petition was not served on the attorney general until four days later. The trial court dismissed the petition for lack of jurisdiction. *Id.* This court affirmed, ruling that RCW 34.05.542(6) did not aid the appellant because the attorney general was not the attorney of record at the time of service. *Id.* at 84. The attorney general also did not receive service until four days after the deadline. *Id.* at 85.

Nothing in *Cheek* indicates that the Attorney General's Office was involved in the case prior to the petition for review. That contrasts sharply with the facts in *Ricketts*. There an AAG was an attorney of record for the Washington State Board of Accountancy in the administrative proceedings. 111 Wn. App. at 115. A copy of the petition for review was mailed to that AAG, and additional copies were mailed to the Office of the Attorney General and Board of Accountancy. *Id.* Construing RCW 34.05.542(6), Division One concluded that timely service on the Board of Accountancy was accomplished by mailing notice to the AAG who had been the attorney of record. *Id.* at 117-18.

Although neither case provides much guidance here, *Ricketts* is slightly more useful than *Cheek* in identifying who is an agency's "attorney of record" for purposes of

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RCW 34.05.542(6). In *Cheek*, this court recognized that the statute did not define the term, applied its common meaning as including an attorney who had filed an appearance in the action, and resolved the issue on the apparent basis that no AAG previously had been involved in the case. 107 Wn. App. at 84. Without describing how counsel had been involved, *Ricketts* recognized that an AAG representing the board was its “attorney of record.” 111 Wn. App. at 115.

In line with those cases, we believe AAG Lee’s participation in the administrative proceedings was sufficient to qualify him as an “attorney of record” under the statute. First, our record contains no indication that Ms. Tennyson had any involvement in the case other than being listed as an additional contact person (besides Mr. McCarroll) for purposes of a motion to reconsider. In contrast, Mr. Lee represented the agency in the initial brief proceeding and subsequently filed a reply to Botany’s appeal to the Board. The argument that he was representing a division of the agency rather than the Board itself is a metaphysical distinction that is not made under our administrative procedures act. Although we recognize that assistant attorneys general can represent different parties in the same administrative or legal³ action, we do not draw the converse conclusion that by representing a division of an agency an attorney is therefore not representing the

³ See, e.g., *Goldmark v. McKenna*, 172 Wn.2d 568, 259 P.3d 1095 (2011) (discussing attorney general’s duty); RCW 43.10.040 (attorney general to represent all departments and agencies of state government in all legal and quasi legal actions).

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agency itself. The answer to that question would be dependent on other factors. Here, however, the only AAG involved in these proceedings was Mr. Lee and there was no intra-agency dispute that required multiple attorneys representing competing agency factions. Rather, one of the Board's divisions appeared in front of it and presented its case through Mr. Lee. As Mr. Lee was the only attorney representing the interests of the Board's licensing division, we believe he also was the Board's "attorney of record" for purposes of RCW 34.05.542(6). We perceive no conflict that would require Mr. Lee to serve only the licensing division instead of the agency as a whole. Indeed, he appeared to represent the Board in superior court.

Accordingly, we reject the Board's argument that Mr. Lee could not be its attorney of record for service of the petition for review. We thus turn to whether the emergency motion for a stay also served as a petition for review.

Petition for Review

In order to obtain superior court appellate jurisdiction, a party aggrieved by an agency action must comply with RCW 34.05.546. That statute states the contents of a petition for review:

A petition for review must set forth:

- (1) The name and mailing address of the petitioner;
- (2) The name and mailing address of the petitioner's attorney, if any;
- (3) The name and mailing address of the agency whose action is at issue;

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- (4) Identification of the agency action at issue, together with a duplicate copy, summary, or brief description of the agency action;
- (5) Identification of persons who were parties in any adjudicative proceedings that led to the agency action;
- (6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;
- (7) The petitioner's reasons for believing that relief should be granted; and
- (8) A request for relief, specifying the type and extent of relief requested.

Similarly, a statute governs the court's ability to grant a stay or other temporary relief. RCW 34.05.550. Of particular interest here is the second subsection of the statute:

After a petition for judicial review has been filed, a party may file a motion in the reviewing court seeking a stay or other temporary remedy.

RCW 34.05.550(2).

Botany filed a motion for stay, identifying the parties and the Board order in question, and arguing two theories in support of its claim that the Board erred in declining to renew Botany's license. The motion also explained that the facts and legal theories were more fully developed in its petition for review filed at the same time. Botany noted that the motion for stay contains the same information required in a petition for review by RCW 34.05.546. Accordingly, it argued to the trial court, and again here, that its properly served motion was the functional equivalent of the petition and should be treated as sufficient to invoke the court's appellate jurisdiction over administrative appeals.

For several reasons, this argument is not persuasive. First, the service statute expressly states that the *petition for review* shall be served on the agency. RCW 34.05.542(2). It does not provide for service of a substituted document.⁴ Second, the stay statute itself expressly states that any motion for relief may be filed *after* the petition for review was filed. RCW 34.05.550(2). It clearly contemplates that two separate documents will be filed in those instances when emergency relief is sought.

Nor is this a question of substantial compliance with the statutory framework. Compliance with the rules of service is mandatory since service is necessary to invoke judicial jurisdiction. *E.g., Skagit Surveyors v. Friends*, 135 Wn.2d 542, 556-57, 958 P.2d 962 (1998). Other procedural requirements are not jurisdictional in nature and are subject to the substantial compliance doctrine. *Id.* at 557. Labeling service of the wrong document as substantial compliance would render the service statute advisory rather than mandatory. While the contents of a petition for review may be subject to substantial compliance in the event they vary from the statute, service of a petition for review is still required. Substitution of a different document is not the same as giving a different name to a rose.⁵

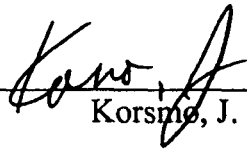
⁴ Botany's argument that the stay motion was just a mislabeled petition for review fails under the facts. The stay expressly noted and incorporated additional facts and argument found in the petition. It cannot be both an alleged substitute for the document as well as the same (but mislabeled) document.

⁵ With apologies to William Shakespeare. ("What's in a name? That which we

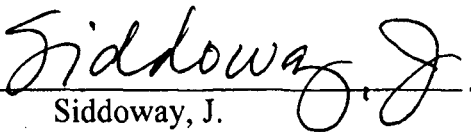
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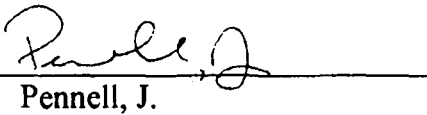
Botany did not serve the petition for review on the Board. The trial court correctly identified that it did not have jurisdiction to entertain Botany's appeal.

Affirmed.


Korse, J.

WE CONCUR:


Siddoway, J.


Pennell, J.

call a rose by any other word would smell as sweet.”) WILLIAM SHAKESPEARE, ROMEO AND JULIET act 2, sc. 2.

APPENDIX B

STATE OF WASHINGTON
WASHINGTON STATE LIQUOR AND CANNABIS BOARD

ATTORNEY GENERAL
OF WASHINGTON
SEP 16 2015
GOVERNMENT COMPLIANCE
& ENFORCEMENT

In the Matter of:

**BOTANY UNLIMITED DESIGN &
SUPPLY LLC d/b/a
BOTANY UNLIMITED DESIGN &
SUPPLY**

**2505 N COMMERCIAL AVE STE D
PASCO, WA 99301-8511**

LICENSEE

**License Application No. 412061
UBI No. 603 180 818 001 0002**

LCB No. M-25,473

OAH No. 07-2015-LCB-00078

**FINAL ORDER ON REVIEW
FOLLOWING BRIEF
ADJUDICATIVE PROCEEDING**

I. REVIEWERS' CONSIDERATION

1.1 Review. This matter comes before the Members of the Liquor and Cannabis Board to review the Findings of Fact, Conclusions of Law and Initial Order of Brief Adjudicative Proceeding entered by Administrative Law Judge, Terry A. Schuh on August 7, 2015. The Initial Order is attached and incorporated into this Order by this reference.

1.2 The Board issued an Order Scheduling Administrative Review of Initial Order on Brief Adjudicative Proceeding dated August 18, 2015, which was served to the parties on August 19, 2015.

1.3 A Request for Administrative Review was received from the Licensee on August 28, 2015. Licensing's Reply to Appellant's Request for Administrative Review was inadvertently filed with OAH on September 8, 2015 and subsequently filed with the Board on September 10, 2015.

1.4 Record of Proceeding. The entire record of this proceeding was presented to the Members of the Liquor and Cannabis Board for review and the entry of a final decision.

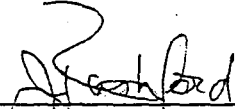
II. ORDER

NOW THEREFORE, IT IS HEREBY ORDERED that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order are hereby adopted as the final decision of the Board. A Licensee that has a disqualifying criminal history has no right to retain a license.

IT IS HEREBY FURTHER ORDERED that the license renewal for Marijuana Producer Tier 2/Processor shall not be renewed, and no further Temporary Operating Permits shall be issued. The Licensee shall cease operations no later than the close of business on September 30, 2015.

DATED this 15th day of September, 2015.

WASHINGTON STATE LIQUOR AND CANNABIS BOARD



Ruthann Kurose

RIGHTS OF REVIEW

Reconsideration. Pursuant to RCW 34.05.470, you have ten (10) days from the mailing of this Order to file a petition for reconsideration stating the specific grounds on which relief is requested. A petition for reconsideration, together with any argument in support thereof, should be filed by mailing or delivering it directly to the Washington State Liquor and Cannabis Board, Attn: Kevin McCarroll, 3000 Pacific Avenue Southeast, PO Box 43076, Olympia, WA 98504-3076, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board's office.

RCW 34.05.010(6). A copy shall also be sent to Mary M. Tennyson, Sr. Assistant Attorney General, 1125 Washington St. SE, P.O. Box 40110, Olympia, WA 98504-0110. A timely petition for

reconsideration is deemed to be denied if, within twenty (20) days from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on the petition. An order denying reconsideration is not subject to judicial review. RCW 34.05.470(5). The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

Stay of Effectiveness. The filing of a petition for reconsideration does not stay the effectiveness of this Order. The Board has determined not to consider a petition to stay the effectiveness of this Order. Any such request should be made in connection with a petition for judicial review under chapter 34.05 RCW and RCW 34.05.550.

Judicial Review. Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).