

NO. 74454-2-I

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

SCOTT SANDSBERRY,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF FINANCIAL INSTITUTIONS,

Respondent.

BRIEF OF RESPONDENT

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 STATE OF WASHINGTON
 DEPARTMENT OF FINANCIAL INSTITUTIONS

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	STATEMENT OF THE ISSUE	2
III.	STATEMENT OF THE CASE	2
	A. Appellant’s Opening Brief Has No Factual Support	2
	B. Statement of Facts.....	3
IV.	ARGUMENT	6
	A. The Court Should Affirm Because Appellant’s Briefing Fails To Comply With Requirements For Appellate Review	6
	B. The Superior Court Properly Dismissed Sandsberry’s Petition For Failing To Comply With The APA’s Requirements For Obtaining Judicial Review	8
	1. Not all parties of record were served.....	10
	2. The Department never received delivery of the petition.....	10
	3. The Department was not timely served through its attorney of record.	11
	4. Sandsberry’s service by mail on the Office of the Attorney General was not timely even if the Attorney General was the Department’s attorney of record.....	12
	5. Appellant’s claimed mailing of the Petition fails, as a matter of law, to satisfy the APA’s service requirements.	13
	C. Substantial Compliance And Claims Of Good Cause Do Not Apply To The APA’s Time Limit For Service	15

1.	Strict compliance with the APA’s time limit for service on the agency is mandatory.....	15
2.	A good cause standard is not applicable the APA’s time limit for service on the Department.....	17
D.	Even If The Doctrine Of Substantial Compliance Applies, The Superior Court Order Should Still Be Upheld.....	18
1.	The Department had no actual notice until after the statutory time limit had lapsed.	19
2.	Sandsberry's untimely service attempt was not reasonably calculated to result in notice to the agency or an attorney of record.	20
V.	CONCLUSION	21

TABLE OF AUTHORITIES

Cases

<i>Banner Realty, Inc. v. Dep't of Revenue</i> 48 Wn. App. 274, 738 P.2d 279 (Div. 2, 1987).....	10
<i>Biomed Comm. Inc. v. State Dep't of Health Bd. Of Pharmacy</i> 146 Wn. App. 929, 193 P.3d 1093 (2008).....	8, 16
<i>Bulzomi v. Dep't of Labor & Indus.</i> 72 Wn. App. 522, 864 P.2d 996 (1994).....	7
<i>Cheek v. Employ. Sec. Dep't</i> 107 Wn. App. 79, 25 P.3d 481 (Div. 3, 2001).....	10, 11
<i>City of Seattle v. Pub. Empl. Relations Comm'n (PERC)</i> 116 Wn.2d 923, 809 P.2d 1377 (1991).....	8, 10, 18
<i>Clymer v. Employment Sec. Dept.</i> 82 Wn. App. 25, 917 P.2d 1091 (1996).....	18
<i>Cont'l Sports Corp. v. Dep't of Labor & Indus.</i> 128 Wn.2d 594, 910 P.2d 1284 (1996).....	18
<i>Crosby v. Cty. of Spokane</i> 137 Wn.2d 296, 971 P.2d 32 (1999).....	18
<i>Diehl v. Wash. Growth Mgmt. Hearings Bd.</i> 118 Wn. App. 212, 75 P.3d 975 (2003), <i>rev'd on other grounds</i> , 153 Wn.2d 207, 103 P.3d 193 (2004).....	8
<i>Fray v. Spokane County.</i> 134 Wn.2d 637, 952 P.2d 601 (1998).....	15
<i>Medina v. Pub. Util. Dist. No. 1</i> 147 Wn.2d 303, 53 P.3d 993 (2002).....	20
<i>Puget Sound Medical Supply v. Washington State Dept. of Social and Health Services</i> 156 Wn. App. 364, 234 P.3d 246 (2010).....	17

<i>Quality Rock Products, Inc. v. Thurston Cty.</i> 126 Wn. App. 250, 108 P.3d 805 (2005).....	16
<i>Ricketts v. Bd. Of Accountancy</i> 111 Wn. App. 113, 43 P.3d 548 (2002).....	8
<i>Ricketts v. Wash. State Bd. Of Accountancy</i> 111 Wn. App. 113, 43 P.3d 548 (2002).....	15
<i>Ruland v. Dep't of Social and Health Services</i> 144 Wn. App. 263, 182 P.3d 470 (Div. 3, 2008).....	19
<i>Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit Cy.</i> 135 Wn.2d 542, 958 P.2d 962 (1998).....	passim
<i>Sprint Spectrum, LP v. Dep't of Revenue</i> 156 Wn. App. 949, 235 P.3d 849 (2010), review denied, 170 Wn.2d 1023, 245 P.3d 774 (2011).....	8, 9, 10
<i>Story v. Shelter Bay Co.</i> 52 Wn. App. 334, 760 P.2d 368 (1988).....	6
<i>Tech Emps. Ass'n v. Pub. Emp't Relations Comm'n</i> 105 Wn. App. 434, 20 P.3d 472 (2001).....	17
<i>Union Bay Pres. Coal. v. Cosmos Dev. & Admin. Corp.</i> 127 Wn.2d 614, 902 P.2d 1247 (1996).....	9, 17
<i>Wells Fargo Bank, NA v. Dep't of Revenue</i> 166 Wn. App. 342, 271 P.3d 268 (Div. 2, 2012).....	10

Statutes

RCW 21.20	4
RCW 34.05.010(19).....	13, 15
RCW 34.05.510	8
RCW 34.05.542	passim

RCW 34.05.542(2).....	10
RCW 34.05.542(4).....	10, 13, 14, 15
RCW 34.05.542(5).....	5
RCW 34.05.542(6).....	11
RCW 36.70C.040.....	16

Other Authorities

Black’s Law Dictionary 129 (6 th ed. 1990).....	11
<i>USPS Domestic Mail Manual DMM Issue 58(8-10-03) PO11</i> <i>Payment 1.2 Mail Without Postage</i>	13
<i>USPS Manual 1-1.3 Postmarks</i>	14

Rules

Civil Rule 10.....	16
Civil Rule 11(a).....	16
RAP 10.3(a)(5).....	6, 7
RAP 10.3(a)(6).....	6, 7
RAP 10.4(f).....	7
RAP 9.2(b).....	6

Regulations

WAC 208-08.....	18
WAC 388-02-0580.....	17

I. INTRODUCTION

Appellant Scott Sandsberry's petition for judicial review (Petition) to King County Superior Court of an administrative final order was dismissed due to his counsel's failure to timely serve the Department of Financial Institutions (Department), as the relevant state agency, or the Office of the Attorney General pursuant to the judicial review provisions of the Administrative Procedure Act (APA), RCW 34.05.542.

On appeal, Sandsberry contends that he had no need to invoke the court's appellate jurisdiction because the APA provides jurisdiction without regard to procedural requirements. Sandsberry also contends he met, or substantially complied with, the requirements of RCW 34.05.542. Both contentions are meritless. The superior court correctly applied the requirements of RCW 34.05.542 in dismissing the Petition. The agency never received personal service of the Petition, and the Office of the Attorney General was not the agency's attorney of record when it was served. Further, the Office of the Attorney General did not receive Appellant's Petition until thirteen days after the statutory deadline for invoking the court's appellate jurisdiction had lapsed. The received copies of the Petition bore no postage or postmark. Thus, as a matter of law, service did not occur on the day of mailing, and, as a matter of fact,

Sandsberry did not demonstrate timely placement of the Petition in the U.S. mail.

Furthermore, the factual allegations on which Sandsberry relies in his opening brief are not supported by the record. The petition for review has not been designated as part of the record and therefore Sandsberry has not met his burden of putting forward facts sufficient to permit meaningful review of the superior court's order.

II. STATEMENT OF THE ISSUE

Did the superior court correctly dismiss Sandsberry's petition for judicial review when Sandsberry's only service of his petition for judicial review occurred thirteen days after the statutory deadline lapsed?

III. STATEMENT OF THE CASE

A. Appellant's Opening Brief Has No Factual Support

Appellant designated a total of twenty pages as the record on review. Sandsberry's record consists of papers from just three docket entries: the clerk's minute entry for the hearing on the Department's motion to dismiss (1 page); the Order of Dismissal with Prejudice (2 pages); and the Notice of Appeal (17 pages). CP 1-20. Nonetheless, Sandsberry's opening brief cites to the Department's Motion to Dismiss

and the supporting declarations, materials which do not appear in the clerk's papers designated by Appellant.¹

Significantly, Counsel for Appellant did not designate the documents most critical to meaningful appellate review. Counsel omitted Sandsberry's Petition for Review of Administrative Decision, the timeliness of service of which is the focus of this appeal. Counsel also omitted the Department's declarations concerning the date of receipt of the copies of the Petition. Copies of the envelopes received by the Department and the Office of the Attorney General were submitted as exhibits to the declarations.

In order to provide a statement of facts supported by specific citations to the record, and to respond to Appellant's unsupported arguments, the Department has supplemented the designation of record with briefing documents relevant to the order of dismissal. CP 21-68.

B. Statement of Facts

After an administrative hearing and initial order, the Department's final order (DFI No. S-13-1159-15-FO01) was served on Respondents

¹ Sandsberry's claims that counsel for the state "has a history of making dishonest statements in this matter" and "admitted to perjuring himself," App. Br., p. 18, have no basis in the record or reality. Sandsberry's action in superior court was dismissed prior to the Department's transmittal of the administrative record to King County Superior Court. The record soundly demonstrates the frivolous nature of the statements by Appellant's counsel. However, this Court's review of the superior court ruling does not depend on seeing that administrative record. Because these statements are immaterial to the review, the Department will not burden the Court with further discussion of the topic.

Runaway Hearts Productions, LLC, Canyon Sands Productions, Inc., and Scott Sandsberry on May 20, 2015. CP 34-47. The Department's reviewing officer declined to hear the Respondents' petition for review of the initial order based on the untimely filing of that petition. CP 37-42. Accordingly, the reviewing officer affirmed the administrative law judge's findings of fact and conclusions of law. CP 44. Respondents were held liable for violations of the securities fraud and securities registration provisions of the Washington State Securities Act, 21.20 RCW. *Id.*

On June 19, 2015, Sandsberry filed a petition for judicial review of the final order in King County Superior Court. App. Br. at 16. The other parties to the administrative action did not join in Sandsberry's Petition. The record contains no evidence these parties were ever served with a copy of the Petition. *See generally* CP 1-68.

On July 2, 2015, the Office of the Attorney General received a copy of the Petition. CP 50, 53. The envelope containing the copy lacked any postage and was stamped in red ink, "Returned for Postage." *Id.* at 4. The amount, "\$1.64," was handwritten on the envelope. *Id.* The envelope was not postmarked. *Id.* On the same day, July 2, 2015, the Department also received a copy of the Petition. CP 31, 49. That envelope containing the copy lacked any postage and was stamped in red ink, "Returned for

Postage.” *Id.* Again, the amount, “\$1.64”, was handwritten on the envelope. *Id.* And again, the envelope was not postmarked. *Id.*

On July 29, 2015, the Department moved to dismiss Sandsberry’s Petition. CP 23-30. The Department argued that Sandsberry failed to comply with the time limit for service on the agency, either directly or through service of counsel of record, which required dismissal. *See id.* Appellant’s response to the Department’s Motion to Dismiss claimed that failure to timely serve a petition on the Office of the Attorney General is not grounds for dismissal of the petition, citing RCW 34.05.542(5), and therefore, the Department’s motion was legally unsupported. *See* CP 60-64. Appellant did not dispute the fact that *neither* the agency nor the Office of the Attorney General had been timely served. *See id.*

On November 20, 2015, after considering oral argument and Sandsberry’s late-filed response brief, the superior court dismissed Sandsberry’s Petition for failure to meet the service requirements of RCW 34.05.542 “and without good cause or ‘substantial compliance’.” CP 2-3. Sandsberry timely filed a notice of appeal. CP 4.

IV. ARGUMENT

A. **The Court Should Affirm Because Appellant's Briefing Fails To Comply With Requirements For Appellate Review**

Sandsberry's opening brief challenges the sufficiency of the evidence to support the superior court's decision. But Appellant provides an insufficient record to review that factual and legal claim. Counsel designated a total of twenty pages, consisting of the clerk's minute entry for the hearing on the Department's motion to dismiss, the Order of Dismissal with Prejudice, and the Notice of Appeal. CP 1-20.

A party seeking appellate review bears the burden to provide a record sufficient to review the issues raised on appeal. *Story v. Shelter Bay Co.*, 52 Wn. App. 334, 345, 760 P.2d 368 (1988). "If the party seeking review intends to urge that a verdict or finding of fact is not supported by the evidence, the party should include in the record all evidence relevant to the disputed verdict or finding." RAP 9.2(b). Here, Sandsberry assigns error to the superior court's order of dismissal based on the APA's time limits but did not submit the Petition, which is necessary to establish the date on which it was filed, a bare requisite for invocation of the superior court's appellate jurisdiction.

Sandsberry's failure to support the factual allegations in his brief by reference to the record also violates RAP 10.3(a)(5), (6). A party must

support arguments with references to relevant parts of the record. RAP 10.3(a)(5), (6); *Bulzomi v. Dep't of Labor & Indus.*, 72 Wn. App. 522, 525, 864 P.2d 996 (1994)(citations omitted). The opening brief's argument section fails to conform to RAP 10.4(f), which requires that references to the record "designate the page and part of the record." The lack of a factual record and lack of citations to the record prevents review of the factual allegations by Appellant with which the Department strongly disagrees.

Without reference to the record, Sandsberry incorrectly states the following: "Sandsberry filed his petition on June 19, 2015. All parties agree the documents were placed in the mail on that day." App. Br., p. 16. The statement is false. The Department does not agree. In the absence of a postmark as evidence of the date of mailing, the Department has no knowledge of when the documents were placed in the mail. In the absence of postage prepaid, the Department has no means by which it might ascertain the date of mailing. It is the Department's position that service of the Petition was effected no earlier than July 2, 2015, the day the copy of the Petition was received by the Office of the Attorney General.

For these reasons, Sandsberry has failed to meet the basic requirements of providing a record and brief which permit an adequate review of the alleged error.

B. The Superior Court Properly Dismissed Sandsberry's Petition For Failing To Comply With The APA's Requirements For Obtaining Judicial Review

The APA provides the exclusive method for obtaining judicial review of an agency's final order. RCW 34.05.510; *see also Sprint Spectrum, LP v. Dep't of Revenue*, 156 Wn. App. 949, 954, 235 P.3d 849 (2010), *review denied*, 170 Wn.2d 1023, 245 P.3d 774 (2011). RCW 34.05.542 sets the time limits and service requirements for a petition for judicial review. Judicial review proceedings are statutory in nature, not falling under the superior court's general or original jurisdiction. *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit Cy.*, 135 Wn.2d 542, 555, 958 P.2d 962 (1998). As such, the superior court acts in a limited appellate capacity when reviewing an administrative decision. *Diehl v. Wash. Growth Mgmt. Hearings Bd.*, 118 Wn. App. 212, 217, 75 P.3d 975 (2003), *rev'd on other grounds*, 153 Wn.2d 207, 103 P.3d 193 (2004)(citations omitted); *City of Seattle v. Pub. Empl. Relations Comm'n (PERC)*, 116 Wn.2d 923, 926, 809 P.2d 1377 (1991). "Without subject matter jurisdiction, a court ... may do nothing other than enter an order of dismissal." *Ricketts v. Bd. Of Accountancy*, 111 Wn. App. 113, 116, 43 P.3d 548 (2002); *Biomed Comm. Inc. v. State Dep't of Health Bd. Of Pharmacy*, 146 Wn. App. 929, 932, 193 P.3d 1093, 1094 (2008)

(“Where a court lacks subject matter jurisdiction in a case, dismissal is the only permissible action the court may take.”).

Sandsberry argues that he had no need to invoke the superior court’s limited appellate jurisdiction because jurisdiction had already been granted to it by the APA. App. Br., p. 11. To the contrary, the Supreme Court of Washington has consistently held that a party must comply with all statutory procedural requirements as to the time for filing and serving a petition for review in order to invoke the superior court’s appellate jurisdiction.

In *Union Bay*, we held that a superior court did not obtain jurisdiction over an appeal from an agency decision unless the appealing party timely filed a petition for review in the superior court and timely served the petition on all of the parties. *Union Bay*, 127 Wash.2d at 617–18, 902 P.2d 1247 (citing *PERC*, 116 Wash.2d 923, 926, 809 P.2d 1377 (1991)”).

Skagit Surveyors & Eng’rs, 135 Wn.2d at 555. Failure to comply with the time for filing and serving a petition for review requires dismissal. *Skagit Surveyors & Eng’rs*, 135 Wn.2d at 557 (dismissal when petitioner failed

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to appropriately serve some of the parties).² Appellant makes no genuine attempt to squarely address the controlling authority on this point of law.

1. Not all parties of record were served.

The APA requires the petition to be filed with the superior court and served on the agency issuing the decision, the Office of the Attorney General, and all parties of record within thirty days after service of an agency's final order. RCW 34.05.542(2). There is no indication that Sandsberry ever served the other parties to the administrative action, Runaway Hearts Productions, LLC and Canyon Sands Productions, Inc. Sandsberry therefore did not invoke the jurisdiction of the superior court. *Skagit Surveyors & Eng'rs*, 135 Wn.2d at 554-57.

2. The Department never received delivery of the petition.

While the Office of the Attorney General and the parties of record may be served by mail, service on the agency must be by delivery to the principal office of the agency. RCW 34.05.542(4); *Sprint Spectrum*,

² *Accord Union Bay Pres. Coal. v. Cosmos Dev. & Admin. Corp.*, 127 Wn.2d 614, 621, 902 P.2d 1247 (1996) (dismissal when petitioner served attorneys of record, not the actual parties as the APA required at that time); *Sprint Spectrum*, 156 Wn. App. at 953 (failure to comply with APA's terms for service of a copy of the petition on Board required dismissal); *Wells Fargo Bank, NA v. Dep't of Revenue*, 166 Wn. App. 342, 271 P.3d 268 (Div. 2, 2012) (failure to file petition within thirty days of final agency action required dismissal); *PERC*, 116 Wn.2d at 928 (dismissal when petitioner served parties three days after former APA deadline); *Cheek v. Employ. Sec. Dep't*, 107 Wn. App. 79, 85, 25 P.3d 481 (Div. 3, 2001) (dismissal when petitioner timely served the attorney general, but served the agency four days after APA deadline); *Banner Realty, Inc. v. Dep't of Revenue*, 48 Wn. App. 274, 278, 738 P.2d 279 (Div. 2, 1987) (dismissal when taxpayer failed to serve the Board within thirty days under former version of APA).

156 Wn. App. at 963 (dismissal proper where statutorily-designated agent not personally served). Sandsberry has never effected personal service on the Department. CP 32.

3. The Department was not timely served through its attorney of record.

The APA provides an alternate means by which a petitioner may serve the agency. 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 record contains no indication that the Office of the Attorney General entered a notice of appearance as the Department's "attorney of record" prior to June 19, 2015, or even on the date of receipt, July 2, 2015. This fact, combined with the lack of delivery of the Petition to the Department, is sufficient to deprive the superior court of appellate jurisdiction. *Cheek*, 107 Wn. App. at 84.

The *Cheek* court squarely addressed an appellant's claim that timely service of the petition on the Office of the Attorney General constituted timely service on the Department pursuant to RCW 34.05.542(6). The court noted the APA does not define "attorney of record" and cited the Black's Law Dictionary definition for its determination that the operative definition is "[a]n attorney who has filed a notice of appearance ... and who hence is formally mentioned in court

records as the official attorney of the party.” *Id.* (citing Black’s Law Dictionary 129 (6th ed. 1990)). Accordingly, the court held that the Attorney General was not the per se attorney of record for the Department and service on the Office of the Attorney General was not properly achieved when the Attorney General was not yet the attorney of record. *See id.* at 82-84. Correspondingly, Sandsberry’s service on the Office of the Attorney General, when the Attorney General had not yet entered a notice of appearance in the case, was not properly achieved.

4. Sandsberry’s service by mail on the Office of the Attorney General was not timely even if the Attorney General was the Department’s attorney of record.

Sandsberry filed his petition in King County Superior Court on June 19, 2015, the thirtieth (30) day from the Department’s service of its final order on all parties. App. Br. at 16. The Department and the Office of the Attorney General received a copy of the petition on July 2, 2015, showing that Sandsberry missed the thirty day service deadline by thirteen (13) days. CP 31, 49-50, 53. In its motion for dismissal, the Department speculated, for purposes of argument, that Sandsberry’s counsel may have deposited the Petition into the U.S. mail system without affixing prepaid postage, a requirement clearly stated in the APA, in order to address the legal merits of that factual scenario. CP 26-27. This was not an admission of anything. The Department did not need to address how Sandsberry

caused the untimely delivery of copies of the petition beyond noting the Department and the Office of the Attorney General received the copies on July 2, 2015, that no postage was affixed to the envelopes, and that the service on the agency was not by delivery to the principal Office of the agency. CP 31-32, 49, 50-53.

5. Appellant's claimed mailing of the Petition fails, as a matter of law, to satisfy the APA's service requirements.

Sandsberry responds to these deficiencies by arguing the Department never alleged a delay in placing the Petition in the U.S. Mail, and, in the alternative, that the Department received actual notice after the time limit had expired. App. Br. at 22-23. But this is, as a matter of plain statutory language, insufficient. There is no showing that delivery of a copy to the office of the director or the principal office of the Department was ever made. RCW 34.05.542(4) expressly states:

Service of the petition on the agency shall be by delivery of a copy of the petition to the office of the director, or other chief administrative officer or chairperson of the agency, at the principal office of the agency. Service of a copy by mail upon the other parties of record and the office of the attorney general shall be deemed complete upon deposit in the United States mail, as evidenced by the postmark.

The APA defines service as “posting in the United States mail, properly addressed, postage prepaid....” RCW 34.05.010(19). It is USPS policy to return mail without postage to the sender without an attempt at delivery.

See USPS Domestic Mail Manual DMM Issue 58(8-10-03) PO11 Payment 1.2 Mail Without Postage (“Matter of any class, including that for which special services are indicated, received at either the Office of mailing or Office of address without postage, is endorsed “Returned for Postage” and is returned to the sender without an attempt at delivery.”).

The APA states that service by mail “shall be deemed complete upon deposit in the United States mail, as evidenced by the postmark.” RCW 34.05.542(4). Neither of the envelopes containing the copies of the petition eventually received by the Department and the Office of the Attorney General were stamped with a postmark. CP 49, 53. The USPS applies a postmark to an envelope in order to cancel affixed postage. *USPS Manual 1-1.3 Postmarks*. CP 26. Presumably, because neither of the envelopes containing copies of the Petition included any form of postage that could be cancelled, no postmark was placed on the envelopes. Without a postmark to evidence the deposit in the mail, service by mail cannot be “deemed complete” pursuant to RCW 34.05.542(4).

In light of this record, the superior court properly found that neither the Office of the Attorney General nor the Department received the documents prior to the expiration of the service deadline. CP 2-3. Sandsberry has not, and cannot, meet the service requirements of

RCW 34.05.542, and the invocation of appellate jurisdiction is barred.

Thus, the matter was properly dismissed.

C. Substantial Compliance And Claims Of Good Cause Do Not Apply To The APA's Time Limit For Service

1. Strict compliance with the APA's time limit for service on the agency is mandatory.

Absent ambiguity, a statute's meaning must be derived from the wording of the statute itself without judicial construction or interpretation. *Ricketts v. Wash. State Bd. Of Accountancy*, 111 Wn. App. 113, 116, 43 P.3d 548, 549 (2002)(quoting *Fray v. Spokane County.*, 134 Wn.2d 637, 649, 952 P.2d 601 (1998)). The APA defines "service" with particularity and requires a postmark as evidence of the timing of service of a copy by mail. RCW 34.05.010(19); RCW 34.05.542(4). The application of an alternative construction of the term "service," by means of applying the substantial compliance doctrine, would not be appropriate.

Sandsberry cites the *Biomed Comm. Inc.* case for the proposition that it is not necessary to meet the strict procedural requirements of the APA to invoke the court's appellate jurisdiction; instead, imperfect appeals should be given an opportunity to be cured. *See* App. Br. at 6. The case does not stand for any such broad proposition. To the contrary, the opinion states without comment that "Both service and filing must be accomplished within 'thirty days after service of the final order.'" Where a

court lacks subject matter jurisdiction in a case, dismissal is the only permissible action the court may take.” *Biomed Comm. Inc.*, 146 Wn. App. at 933-34 (citing *Skagit Surveyors*, 135 Wn.2d at 556). The court then states that the petition was both timely filed and served. *Id.* at 940. The court’s holding addresses the limited question of whether a corporation’s petition for review, which was not signed by an attorney, and therefore violated Civil Rule 11(a), should be dismissed. *See id.* at 941. Because Civil Rule 11(a) requires that a pleader or movant be given an opportunity to cure a signature defect promptly after the omission is called to attention and the relevant APA provisions do not mention any signature requirement, the court concluded the lack of an attorney’s signature on a timely petition for review is not jurisdictional. *Id.*

Sandsberry also argues the details of service need not be considered when a party acknowledges receipt of a petition. App. Br. At 6-7 (citing *Quality Rock Products, Inc. v. Thurston Cty.*, 126 Wn. App. 250, 260, 108 P.3d 805, 810 (2005)). The decision in *Quality Rock Products, Inc.*, a land use action, did not turn in any way on an agency’s acknowledgment of receipt of a petition for review. The court simply observed that the provision of the Land Use Petition Act relevant to invoking appellate jurisdiction, RCW 36.70C.040 and not

RCW 34.05.542, did not include the formalistic case caption and formatting requirements of Civil Rule 10. *See id.*

Moreover, a failure to comply with the time limit for service is not a minor defect. None of the cases cited by Sandsberry provides any basis for challenging the well-settled conclusion of law that the APA's statutory definition of "service" precludes application of the substantial compliance doctrine. *Skagit Surveyors & Eng'rs*, 135 Wn.2d at 556 (1998); *Union Bay Pres. Coal.*, 127 Wn.2d at 620 (1995); *Tech Emps. Ass'n v. Pub. Emp't Relations Comm'n*, 105 Wn. App. 434, 438, 20 P.3d 472 (2001). The Superior Court properly rejected Sandsberry's claim of substantial compliance with the APA's time limit for service.

2. A good cause standard is not applicable to the APA's time limit for service on the Department.

The "good cause" standard argued by Sandsberry, App. Br. at 19, is applicable only to judicial review of cases which interpret a laxer compliance standard contained in a particular state agency's service rule. In *Puget Sound Medical Supply v. Washington State Dept. of Social and Health Services*, 156 Wn. App. 364, 370, 234 P.3d 246 (2010), the court interpreted former WAC 388-02-0580's reference to "good reason" to be synonymous with a "good cause" standard. The court applied a provision of the Washington Administrative Code (WAC) relevant only to the

Department of Social and Health Services. *See id.* The same compliance standard is not generically applicable to all APA reviews. RCW 34.05.542; *see also Clymer v. Employment Sec. Dept.*, 82 Wn. App. 25, 30, fn. 2, 917 P.2d 1091 (1996) (“The inclusion of a good cause exception in the unemployment compensation statute makes the absence of an exception in the APA more striking.”). The Department’s administrative rules contain no “good cause” exception. *See generally* WAC 208-08.

D. Even If The Doctrine Of Substantial Compliance Applies, The Superior Court Order Should Still Be Upheld

In cases not involving APA review of agency orders, courts have sometimes interpreted the jurisdictional requirements to be satisfied by substantial compliance. *See, for example, Crosby v. Cty. of Spokane*, 137 Wn.2d 296, 971 P.2d 32 (1999). Substantial compliance has been defined as “actual compliance in respect to the substance essential to every reasonable objective of [a] statute.” *PERC*, 116 Wn.2d at 928. It has been applied when there has been actual compliance with the relevant statute, but with minor procedural defaults. *Cont’l Sports Corp. v. Dep’t of Labor & Indus.*, 128 Wn.2d 594, 602, 910 P.2d 1284 (1996). “The foundation of substantial compliance is meeting the basic purposes of the statute, which

include timeliness, appropriate forum, and notice.” *Ruland v. Dep’t of Social and Health Services*, 144 Wn. App. 263, 275, 182 P.3d 470 (Div. 3, 2008).

1. The Department had no actual notice until after the statutory time limit had lapsed.

Sandsberry argues that a late-arrived document still provides actual notice sufficient to invoke the court’s appellate jurisdiction. *See* App. Br. at 13 (citing *Diehl*, 153 Wn.2d 207). At most, *Diehl* stands for the proposition that *timely* actual notice, combined with some limited procedural faultiness, is capable of meeting the standard of “the substance essential to every reasonable objective of the statute.” The facts of that case are distinguishable. The *Diehl* court noted that no party had challenged service or the timeliness of the petition. “Neither the Court of Appeals nor the trial court found that the parties lacked actual notice or that Diehl had failed to timely serve his petition. Nor does any party specifically allege that Diehl failed to serve them or that the petition was untimely, which would preclude subject matter jurisdiction under RCW 34.05.542.” *Diehl*, 153 Wn.2d at 218. In contrast, the Department moved expeditiously to dismiss based on the failure to receive timely service of Sandsberry’s Petition. CP 23-30.

Further to that point, the Washington Supreme Court has unambiguously, and repeatedly, held that where time requirements are concerned, “[F]ailure to comply with a statutorily set time limitation cannot be considered substantial compliance.” *Medina v. Pub. Util. Dist. No. 1*, 147 Wn.2d 303, 317, 53 P.3d 993 (2002); *PERC*, 116 Wn.2d at 928-29 (“Service after the time limit cannot be considered to have been actual service within the time limit. We therefore hold that failure to comply with a statutorily set time limitation cannot be considered substantial compliance with that statute.”). Neither the Department nor the Office of the Attorney General received actual notice of appeal before the statutory time limit of thirty days had lapsed. CP 31-32, 50-51. If the specific time requirements of the plain language of RCW 34.05.542 are to have any meaning at all, Sandsberry’s non-compliance with the thirty-day time limitation cannot be considered substantial compliance.

2. Sandsberry's untimely service attempt was not reasonably calculated to result in notice to the agency or an attorney of record.

Sandsberry’s flawed attempt to complete service was not reasonably calculated to give notice of the Petition to the agency. Even assuming without deciding that the copies of the Petition were placed in the U.S. mail, properly addressed to the agency and the Office of the Attorney General on or before the deadline for appeal, June 19, 2016, it is

not reasonable to expect the documents to timely reach their destination if prepaid postage has not been affixed. Thus, even if the substantial compliance standard applied here, the defects in the service of the Petition are fatal to Sandsberry's invocation of the superior court's appellate jurisdiction.

V. CONCLUSION

For all of the foregoing reasons, the Department respectfully requests that this Court affirm the superior court's order dismissing Sandsberry's petition for judicial review.

RESPECTFULLY SUBMITTED this 9th day of September, 2016.



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NO. 74454-2-I

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

SCOTT SANDSBERRY,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF FINANCIAL
INSTITUTIONS,

Respondent.

DECLARATION OF
SERVICE

STATE OF WASHINGTON
2016 SEP 12 AM 11:55

I certify that I served a true and correct copy of the Brief of Respondent on all parties or their counsel of record on the date below as follows:

M. ELIZABETH de BAGARA STEEN
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- U.S. mail via state Consolidated Mail Service (with proper postage affixed)
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- Courtesy copy via electronic mail: liz@washingtonbusinessadvocates.com

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 9th day of September, 2016, at Olympia, WA.


MARLENA MULKINS
Legal Assistant