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No. 66140-0-I

COURT OF APPEALS DIVISION ONE  
OF THE STATE OF WASHINGTON

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SCOTT E. STAFNE  
Advocate, Officer of the Court, Appellant

vs.

SEATTLE SCHOOL DISTRICT NO. 1

Respondent/Appellee

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APPEAL FROM SUPERIOR COURT  
FOR KING COUNTY

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APPELLANT'S OPENING BRIEF

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COURT OF APPEALS DIVISION ONE  
STATE OF WASHINGTON  
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## Table of Contents

A. Assignment of Errors .....	1
B. Issues Relating to Assignment of Errors .....	1
C. Statement of the Case .....	3
D. Argument .....	13
I. <u>Standards of Review Applicable to Issues of Appeal</u> ..	13
II. <u>The District Did Not Comply with RCW 28A.645.020</u> ..	14
III. <u>Separation of Powers</u> .....	19
IV. <u>Access to Justice</u> .....	23
V. <u>Due Process</u> .....	24
VI. <u>What are the Consequences of the School Board’s Refusal to Comply with RCW 28A.645.020?</u> .....	31
VII. <u>Stafne has Standing to Challenge the Superior Court’s Decision Dismissing Appellants’ Appeal Based upon the Legal Conclusion he Abandoned their Case.</u> .....	34
VIII. <u>The Superior Court Erred in Failing to Admit the Auditor’s Report During the Summary Judgment Proceedings.</u> .....	41
E. Conclusion .....	42

**Table of Authorities**

**A. Table of Cases**

**Washington Cases**

*Andersen v. King County*, 158 Wn.2d 1, 138 P.3d 963 (2006) . . . . .22

*Berger v. Sonneland*, 144 Wn.2d 91, 26 P.3d 257 (2001) . . . . .14

*Board of Regents of University of Washington v. City of Seattle*, 108 Wn.2d 545, 741 P.2d 11 (1987) . . . . . 19, 30

*Breda v. B.P.O. Elks Lacle City*, 120 Wn. App. 351, 90 P.3d 1079 (2004) . . . . . 34

*Brown v. State*, 155 Wn.2d 254, 119 P.3d 341 (2005) . . . . .21

*City of Tacoma v. O'Brien*, 85 Wn.2d 266, 534 P.2d 114 (1975) . . .27

*City of Tacoma v. Taxpayers of City of Tacoma*, 108 Wn.2d 679, 743 P.2d 793 (1997) . . . . . 34

*Clingan v. Department of Labor & Indus.*, 71 Wash. App. 590, 860 P.2d 417 (1993) . . . . . 14

*Conom v. Snohomish County*, 155 Wn.2d 154, 118 P.3d 344 (2005) . . . . .19

*Davis v. Gibbs*, 39 Wn.2d 481, 236 P.2d 545 (1951) . . . . . 18

*Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 819 P.2d 370 (1991) . . . . .23, 24

*Fay v. Northwest Airlines, Inc.*, 115 Wn.2d 194, 796 P.2d 412 (1990) . . . . . 18

*Folsom v. Burger King*, 135 Wn.2d 658, 958 P.2d 301 (1998) . . . . . 14

<i>Hale v. Wellpinit Sch. Dist. No. 49</i> , 165 Wn.2d 494, 198 P.3d 1021 (2009) . . . . .	20
<i>Haynes v. Seattle School District</i> , 111 Wn.2d 250, 758 P.2d 7 (1988) . . . . .	18, 31
<i>Household Finance Corp. v. Washington</i> , 40 Wn.2d 451, 244 P.2d 260 (1952) . . . . .	21, 29
<i>Humphrey Industries, Ltd. v. Clay Street Associates, LLC</i> , 242 P.3d 846 (2010) . . . . .	15, 28
<i>In re Guardianship of Lasky</i> , 54 Wn. App. 841, 776 P.2d 695 (1989) . . . . .	35
<i>In re McCarthy</i> , 161 Wn.2d 234, 164 P.3d 1238 (2007) . . . . .	25
<i>Keep Watson Cutoff Rural v. Kittitas County</i> , 184 P.3d 1278, 145 Wn. App. 31 (2008) . . . . .	19
<i>Loveless v. Yantis</i> , 82 Wn.2d 754 (1973) . . . . .	19, 33
<i>Magana v. Hyundai Motor Co.</i> , 167 Wn.2d 570, 220 P.3d 191 (2009) . . . . .	24
<i>Mission Springs, Inc. v. City of Spokane</i> , 134 Wn.2d 947, 954 P.2d 250 (1998) . . . . .	28
<i>Municipality of Metro. Seattle v. Division 587, Amalgamated Transit Union</i> , 118 Wn.2d 639, 826 P.2d 167 (1992) . . . . .	20
<i>Neah Bay Chamber of Commerce v. Dept. of Fisheries</i> , 119 Wn.2d 464, 832 P.2d 1310 (1992) . . . . .	19, 30, 32
<i>Noe v. Edmonds Sch. Dist. No. 15</i> , 83 Wn.2d 97, 515 P.2d 977 (1973) . . . . .	20
<i>Palermo at Lakeland, LLC v. City of Bonney Lake</i> , 193 P.3d 168, 147 Wn. App. 64 (2008) . . . . .	25
<i>Sedlacek v. Hillis</i> , 145 Wn.2d 379, 36 P.3d 1014 (2001) . . . . .	20

*State Dept. of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 43 P.3d 4 (2002) . . . . .21

*State ex rel. Foster-Wyman Lumbar Co. v. Superior Court*, 148 Wn. 1, 267 P. 770 (1928) . . . . . 21, 29

*Trummel v. Mitchell*, 156 Wn.2d 653, 131 P.3d 305 (2006) . . . . .13

**Federal Cases**

*United States ex rel. Wilcox v. Johnson*, 555 F.2d 115 (3d Cir. 1977) . . . . . 41

**Out of State Cases**

*State ex rel. Klise v. Town of Riverdale*, 244 Iowa 423, 57 N.W.2d 63 (1953) . . . . . 29

**B. Constitutions**

U.S. Const. amend. XIV, § 1 . . . . .24

Wash. Const. art. I, § 3 . . . . . 24

Wash. Const. art I, § 10 . . . . .2, 6, 23, 24

Wash. Const. art. IV, § 1 . . . . .19

Wash. Const. art. IV, § 6 . . . . .18, 21

Wash. Const. art. IX, § 2 . . . . . 21

**C. Statutes**

RCW 9A.72.085 . . . . .17

RCW 11.42.030 . . . . .17

RCW 11.92.096(1)(a) . . . . .17

RCW 28A.320.015(2) . . . . .25, 26

RCW 28A.645.010 . . . . . 20, 31

RCW 28A.645.020 .....	<i>passim</i>
RCW 28A.645.030 .....	16
RCW 29A.72.110 .....	17
RCW 30.22.245 .....	17
RCW 42.44.100(5) .....	17
RCW 43.09.180 .....	9, 22, 41
RCW 58.17.165 .....	17
RCW 60.42.010(g) .....	17
RCW 70.58.107 .....	17
<b>D. Rules</b>	
King County Local Rule 4 .....	6
RAP 3.1 .....	34, 36
RPC 1.1 .....	36
RPC 3.3 .....	37, 40
<b>E. Other</b>	
<i>ABA Formal Opinion 87-353 (April 20, 1987)</i> .....	41

**A. Assignment of Errors**

1. The Superior Court erred in granting the School Board extra time to "assemble" a record which could not be certified "to be correct" pursuant to RCW 28A.645.020.

2. The Superior Court erred in holding that it could decide an appeal pursuant to RCW Chapter 28A.645.020 based on an untimely record which the School Board refused to certify to be correct.

3. The Superior Court erred in ruling that Appellants' appeal should be dismissed because their counsel refused to file an appellate brief based on the untimely and uncertified record.

4. The Superior Court erred in sustaining the School District's (District) objection to the State Auditor's Report being considered as evidence relating to the Appellant's motion for summary judgment.

**B. Issues Relating to Assignment of Errors**

1. Is the requirement set forth in RCW 28A.645.020 that a transcript of evidence shall be filed within 20 days of the filing of a complaint jurisdictional?

2. Is the requirement set forth in RCW 28A.645.020 that a transcript of evidence be certified "to be correct" jurisdictional?

3. Did the School Board substantially comply with the timeliness requirement of RCW 28A.645.020?

4. Did the School Board substantially comply with the requirement in RCW 28A.645.020 that the transcript of record be certified to be correct?

5. Did the Superior Court have authority under the separation of powers to relieve the School Board of its responsibility under RCW 28A.645.020 to file the transcript of evidence within 20 days?

6. Did the Superior Court have authority under the separation of powers to relieve the School Board of its responsibility under RCW 28A.645.020 to certify the transcript of evidence "to be correct"?

7. Did the failure to timely file an administrative record that was certified to be correct within 20 days violate Appellants' access to the court pursuant to Wash. Const. art. I, § 10?

8. Did the failure to prepare an administrative record during the decision-making process violate Appellants' right to due process?

9. Is an attorney who obtains an unfavorable result for a client as a result of his refusal to file an appellate brief based on the contention that doing so would require him to submit false evidence and violate a statute a person aggrieved for purposes of filing an appeal?

10. Should the Superior Court have admitted the State Auditor's Report as evidence with regard to Appellant's motion for summary judgment that the District had not complied with RCW 28A.645.020?

**C. Statement of the Case**

RCW 28A.645.020 provides:

Within twenty days of service of the notice of appeal, the School Board, at its expense, or the school official, at such official's expense, shall file the complete transcript of the evidence and the papers and exhibits relating to the decision for which a complaint has been filed. Such filings shall be certified to be correct.

Appellants adopt the statement of facts set forth in the School District's (District) March 10, 2010 "motion for an extension of time to file an administrative record" as part of their statement of the case:

Appellants filed notice of appeal on **March 5, 2010** of the District's February 3, 2010 decision to award a contract to New Technology Network (NTN) to implement a Science, Technology, Engineering, and Mathematics (STEM) program at Cleveland High

School<sup>1</sup>. The Case Schedule Order provides that the District shall file the administrative record by **May 7, 2010**.

RCW 28A.645.020 prescribes 20 days to file the administrative record after the notice of appeal is filed. Upon receipt of the notice of appeal, the District immediately began to assemble the necessary material that comprises the administrative record. *Declaration of Ronald English* (hereafter "English Decl."). The administrative record assembled so far includes transcripts of School Board meetings, documentation of open public meetings, documents provided to the School Board during the course of the decision-making, and thousands of emails, public comment cards, documents supporting the School Board's decision and a variety of other material. *Id.* The District is currently reviewing and assembling several thousand pages of additional material that will comprise the administrative record, including 125,000 emails. *Id.* After the material is gathered, the District will have to number and copy each item to not only file the record with the Court, but to produce a copy to Appellants. *Id.*

To complicate matters, the District does not routinely transcribe the electronic record of Board meetings because the vast majority of Board decisions are not appealed. Furthermore, each of the seven board members and their staff have independent e-mail accounts to conduct District business which in turn translates into thousands of electronic messages that must be identified, culled, and subsequently printed, numbered, and copied, in order to complete the administrative record. The District does not have sufficient staff to complete this assignment by the RCW 28A.645.020 deadline of March 25, 2010, less than ten days from today. *Id.* The District estimates that the entire administrative record can be assembled, numbered, copied and filed by May 7, 2010. *Id.* The District intends to file the entire administrative record as soon as reasonably possible, but needs additional time to do so. *Id.* Appellants' attorney Scott Stafne

declined the District's request to extend the deadline for filing the administrative record in this case on March 12, 2010. Dec. of Counsel, Ex. 1. [Emphasis Supplied]

Clerk's Papers (CP) p. 7, line 4 – p.8, line 14.

Footnote 1 following the first sentence of the statement of facts set forth in the District's motion for an extension of time stated:

This is the third in a recent series of appeals challenging the authority of the District. The other appeals are assigned to Judge Theresa Doyle under King County Cause No. 09-2-45712-3 SEA and Judge Laura Inveen under King County Cause 09-2-45711-5 SEA. Here, as in each of the previous appeals, Appellants denied the District's request for an extension of time to file the administrative records.

The District framed the issue before the superior court as:

“Should the statutory deadline for filing the administrative record be extended to comport with the deadline for filing the administrative record that is set forth in the Case Schedule Order - - *i.e.*, extending the deadline to May 7, 2010?”

CP p. 8, lines 16 – 19.

Appellants opposed the motion on grounds that Section .020 required the School Board to have in place a system for creating, maintaining, preserving, and retrieving an administrative record within 20 days after a complaint was filed. Appellants objected to the "assembly" of an appellate record after the fact because there was no way to certify which documents, papers, and exhibits the School Board considered as part of its

decision-making. *See e.g.* CP, p. 37:1 - 4; p. 38:4 - 41:2; p. 48 - 159. In their response brief, appellants identified three constitutional problems with the creation of an administrative record “after the fact”. They included (1.) violation of separation of powers because courts must scrutinize the administrative record the School Board actually utilized in making their legislative decisions in order to determine whether the board’s decision was arbitrary and/or capricious, App. p. 41, line 13 – p. 43, line 4; (2.) violation of Petitioner/Appellants’ right under Wash. Const. art I, § 10 because the District’s failure to keep a traditional administrative record denied them access to an appellate record the legislature intended the board’s decisions to be based upon, App. p. 43, lines 5 - 14; and (3.) violation of due process of law because public comments were not kept as part of a contemporaneously created administrative record decision-makers had access to during the deliberative process, App. p. 43, line 15 – p. 44, line 23.

The District replied the superior court had inherent authority to extend the statutory time limit imposed by section .020 by issuing a scheduling order pursuant to KCLR 4. App. p. 161, lines 2 - 14. Further, the District argued Petitioner/Appellants had not shown that any prejudice would accrue to them by allowing the District an extension of time to “assemble”

until May 7, file the Transcript of Evidence. App. p. 162, line 18 – p. 163 line 2.

The Superior Court granted the District's motion for an extension of time on March 29, 2010. CP p. 627 - 628. The order provided: "Date for filing admin record is extended until 5/7/10". *Id.*

Appellants filed a notice for discretionary review in the Supreme Court challenging the Superior Court's order granting an extension of time.

On April 16, 2010 Gregory Jackson, attorney for the School Board, submitted a transcript of evidence that was "comprised of documents marked as-00001 - 16854." CP pp. 659 - 657. The certification part of that document was signed by Susan Enfield and dated April 20, 2010. CP 659. Ms, Enfield did not certify the filings she alleged constituted the Transcript of Evidence to be correct. *Id.* Ms. Enfield's certification stated only:

"I, Susan Enfield, certify that the attached documents constitute the "transcript of evidence and paper and exhibits related to the decision[s]" the Seattle School Board made for the NTN contract and Cleveland Stem."

The certificate of service indicates this first "transcript of evidence" was served on April 22, 2010. CP 660.

Mr. Jackson filed another "notice of filing of transcript of evidence and certification" relating to the decisions being challenged that was "comprised of documents marked as 00001 - 20391". CP 662 - 663. This filing was dated May 14, 2010. CP 663. Ms. Enfield signed another certification which failed to identify the filing constituting this new transcript of evidence to be correct. Ms. Enfield's new certification stated:

I, Susan Enfield, certify that the attached documents constitute the transcript of evidence and the papers and exhibits related to the decision[s]" the Seattle School Board made for the NTN contract and the Cleveland STEM on April 7, 2010."

The Commissioner of the Supreme Court issued a ruling denying review on June 7, 2010, in this and the related cases against the School Board identified by the District in its motion for an extension of time. CP p. 7, lines 24 - 26. A copy of the Commissioner's ruling denying review in this case is set forth at CP pp. 165 - 169. Copies of the Commissioner's decisions denying review in the related cases against the School Board can be found at CP pp. 250 - 264. Each of these decisions indicate the School Board must certify under RCW 28A.645.020 that the record is correct. *See* CP 168, 243, 263.

On July 10, 2010, Appellants filed a motion for summary judgment that the "transcript of record filed by the School Board with regard to the

decision being appealed has not been certified 'to be correct' as is required by the second sentence of RCW 28A.645.020". Appellants' motion relied upon as evidence, among other things, a report from the State Auditor that was critical of the School Board's failure to follow applicable laws, such as RCW 28A.645.020. CP, 172:4 - 173:9. RCW 43.09.180 declares the legislature's intention that the auditor's report be admissible as evidence.

Appellants argued the Commissioner's statements in the related actions previously identified that the School Board must certify the record to be correct constituted authority for the proposition that the second sentence of RCW 28A.645.020 must be complied with. That sentence states: "Such filings [constituting the transcript of record] shall be certified to be correct". CP 173:15 - 174:21. Appellants also argued that under the separation of powers doctrine the Superior Court was bound to follow the explicit language of RCW 28A.645.020 that the filings shall be certified to be correct. CP. 174:22 - 177:14.

The District moved to strike the State Auditor's report from being considered as evidence. CP 273 - 277. The District argued:

... [t]he authentication provision of the statute, '[s]uch filing shall be certified to be correct' requires School Boards to verify that the administrative record produced is the record for the case on appeal. Authentication is a threshold requirement designed to assure that

evidence is what it purports to be. *State v Payne*, 117 Wn. App. 99, 69 P.3rd 889 (2003). Appellants erroneously argue that the sentence '[s]uch filings shall be certified to be correct' prescribes the contents of the certification rather than the real purpose in authenticating the contents of the record itself. The two are not the same. Indeed, had the legislature intended for School Boards to insert the word 'correct' into the certification, they could have easily written that language into the statute.<sup>2</sup>

CP 268:24 – 269:8.

The District argued at CP 269:13 - 19 that the School Board properly certified the records submitted:

by certifying that the records submitted constitute the 'transcript of the evidence and the papers and the exhibits related to the decisions made by the Seattle School Board related to the NTN contract and the Cleveland STEM *of February 3, 2010*. [Emphasis Supplied]

The District's apparent quote to the District's certifications is inaccurate. The first certification contains no date whatsoever. CP, 659.

The Superior Court denied Appellants' motion for summary judgment. CP 311 - 312. The order states "the certification dated 4-20-10 is sufficient under the statute to establish the record certified by the District as a complete transcript of all the evidence + papers + exhibits."

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<sup>2</sup> It is Appellants' position that the legislature did include the word "correct" in the instruction "[s]uch filings shall be certified to be *correct*." [Emphasis added]

The Superior Court also granted the District's motion to strike the state auditor's report from consideration at summary judgment. CP 313 - 314.

On August 17, 2010 appellants file a request for an extension of time to file their opening pre-hearing brief. CP, 315 - 316. The request stated:

"On Monday August 16th, 2010 Attorney Scott E. Stafne notified the above plaintiffs [sic] that he would be unable to represent them. Attorney Stafne stated he will not represent clients in the absence of the "Certified Correct Transcript" as required by RCW 28A.645.020. The above plaintiffs request a thirty-day extension to find a new legal representative.

CP 316. James Watt, an attorney who associated with Stafne for purposes of supporting appellants request for an extension of time, also filed a motion for a continuance noting that Stafne would not participate in an appeal where the District refused to certify the record to be correct in accordance with the language of RCW 28A.645.020. CP 317 - 320.

The District's overlong response to Appellants' request for continuance essentially argued that their appeal should be dismissed if they missed the deadline for filing their opening appeal brief. CP 322:18 - 23. Further, the District argued that Stafne's refusal to file an appeal brief based on a record the School Board refused to certify was correct did not constitute good cause. CP 324:5 - 327:3. Finally, the District argued it would be

futile to allow Appellants to amend their complaint because they lacked standing. CP 327:4 - 330:14.

On August 10, 2010, attorney Stafne filed a "withdrawal of motion for continuance." CP 356 - 363. The withdrawal contended the District's response to the motion to continue was essentially a motion to dismiss, which appellants did not have adequate time to respond to. CP 356:13 - 357-1. Stafne also claimed that under the Rules of Professional Conduct 3.3 he believed he was precluded (or authorized) to refrain from participating in an appeal based on a record which did not comply with RCW 28A.645.020. CP, 357:2 - 359:21.

In this case, appellants' counsel arguably could elect to proceed to participate in an appeal based on and protected by this Court's several order [in related cases] ruling that the law does not mean what it says. But the question here is: Must an officer of the Court bow to a Court's decision regarding its own subject matter jurisdiction if there is a legitimate dispute as to that matter? If so, how is this different than participating in the sham trials that are said to go on daily in China and Iran? The Nuremburg trials repudiated the 'cog in the wheel' defense and to some extent mandated that at some point an individual must not participate in action that s/he knows is wrong.

If Stafne's position that the law should be interpreted as it is written is frivolous in the 21st century then surely Stafne, not his clients, should be sanctioned.

CP 359: 13 – 22.

The final portion of Stafne's withdrawal argued that parents should be allowed to appear before the courts with regard to appeals of School Board decisions pursuant to RCW 28A.645.020. CP, 360:5 - 362:22.

The District filed a motion to dismiss, which was granted on September 22, 2010. The order states:

The first reason that this motion is granted is because appellants attorney [Stafne] stated on the record at the hearing that he did not file his brief because he did not intend to pursue the claim because he felt he was precluded from doing so by prior courts of this and appellate court. This Court considers the appellants to have abandoned their claim.

No other reason was given for granting the District's motion to dismiss.

#### **D. Argument**

##### **I. Standards of Review Applicable to Issues of Appeal**

The standard of review for a typical motion for a extension of time is abuse of discretion. *Trummel v. Mitchell*, 156 Wn.2d 653, 670, 131 P.3d 305 (2006). However, because appellants objection to the District's motion for an extension of time was that the Superior Court did not have the authority/jurisdiction to grant such a motion, the standard of review

which should be applied to review of the order granting an extension of time is de novo or an "error of law" analysis. *Clingan v. Department of Labor & Indus.*, 71 Wash. App. 590, 592, 860 P.2d 417 (1993) (jurisdiction is a question of law reviewed de novo).

The standard of review applicable to the Superior Court's ruling on Appellants' motion for summary judgment that the District had not complied with the second sentence of RCW 28A.645.020, *i.e.* "such filings shall be certified to be correct", is de novo. *Folsom v. Burger King*, 135 Wn.2d 658, , 663, 958 P.2d 301 (1998).

The standard of review as to whether Appellants abandoned their case because Stafne refused to participate in the arguing the merits of a substantive appeal of the school board decisions is de novo. *Berger v. Sonneland*, 144 Wn.2d 91, 103, 26 P.3d 257 (2001) (citing *Mountain Park Homeowners Assn., Inc. v. Tydings*, 125 Wn.2d 337, 883 P.2d 1383 (1994): "All questions of law are reviewed de novo."

## **II. The District Did Not Comply with RCW 28A.645.020.**

RCW 28A.645.020 sets forth two unequivocal requirements. First, "[w]ithin twenty days of service of the notice of appeal, the School Board, ... shall file the complete transcript of the evidence and the papers and exhibits relating to the decision for which a complaint has been filed."

The second requirement is: “[s]uch filings shall be certified to be correct.”

*Id.*

There is no dispute that the two separate filings purporting to be the “Transcript of Evidence” were not timely filed. CP pp. 657 - 664. Appellants argued below, among other things, that filing the Transcript of Evidence later than twenty days did not constitute substantial compliance with the statute. The District argued the School Board did not have to comply with the twenty day filing requirement imposed by RCW 28A.645.020 because the King County Superior Court had established a different deadline for filing. CP, 161:162 - 17.

Our Supreme Court recently indicated that as a general matter substantial compliance requires meeting statutory deadlines. *Humphrey Industries, Ltd. v. Clay Street Associates, LLC*, 242 P.3d 846, 851 - 853 (2010).

[S]ubstantial compliance with a statutory deadline, including a specified time such as that contained in RCW 25.15.460, is impossible—one either complies with it or not. *See* Pet. for Review at 9 (citing *City of Seattle v. Pub. Employment Relations Comm'n*, 116 Wn.2d 923, 928-29, 809 P.2d 1377 (1991); *Westcott Homes, LLC v. Chamness*, 146 Wn. App., 735, 192 P.3d 394 (2008); *Petta v. Dep't of Labor & Indus.*, 68 Wn. App. 406, 409-10, 842 P.2d 1006 (1992))

*Id.* at 151.

The legislature chose the 20 day deadline to facilitate the expedited appeal process envisioned for School Board decisions. *See* RCW 28A.645.030 ("... Such appeal shall be heard expeditiously."). While the legislature did not impose a specific deadline within which courts had to hear and decide a appeal, the legislature did specifically and authoritatively determine the School Board has to file a record in twenty days so that the court could decide an appeal expeditiously.

In this appeal, the first record containing 16,854 document was filed and served on April 22, 2010. CP 646. The second record containing 20,391 documents was filed on May 21, 2010. ***RCW 28A.645.020 mandated the record be filed on March 26, 2010.*** The Superior Court had no discretion to allow the School Board to simply violate this appeal statute. Wash. Const. art IV, § 6. *See also* infra.

The District also refused to comply with the second requirement of RCW 28A.645.020 that "[s]uch filings shall be certified to be correct". CP 635, 641. The District's argument for not doing so is flawed. *See* District's Response, CP 269:6 - 8: "... had the legislature intended for School Boards to insert the word 'correct' into the certification, they could have easily written that language into the statute." The Supreme Court Commissioner found the second sentence of RCW 28A.645.020 is a

certification requirement that the legislature wrote into the statute. CP 168, 243, 263.

Many statutes contain a similar requirement. Examples include: RCW 42.44.100 (5) Short forms of [notary] certificate; RCW 30.22.245 (Records — Admission as evidence — Certificate); RCW 70.58.107 (Fees charged by department and local registrars.); RCW 29A.72.110 (Petitions to legislature — Form.); RCW 60.42.010 (g) (Commercial real estate broker lien act); RCW 11.92.096 (1) (a) (Guardian access to certain held assets.); RCW 11.42.030 (Notice to creditors — Form.); RCW 58.17.165 (Certificate giving description and statement of owners must accompany final plat — Dedication, certificate requirements if plat contains — Waiver); RCW 9A.72.085: (Unsworn statements, certification).

If the record the District "assembled" after decision-making has occurred is "correct", why doesn't the School Board just certify this fact?<sup>3</sup> If, as the Supreme Court Commissioner found, this is a requirement of RCW 28A.645.020 the School Board's continuing practice of refusing to

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<sup>3</sup> The District's responses to interrogatories regarding the adequacy of the record in one of the related cases where the District refused to certify the record to be correct indicates that the reason for this is the District does not keep formal and administrative records and is unaware of its duty to certify such records. CP 136:17 - 147:14. *See also* CP 49:6 - 54:1

certify its administrative records to be correct does not constitute substantial compliance with RCW 28A.645.020. *Davis v. Gibbs*, 39 Wn.2d 481, 485, 236 P.2d 545 (1951) (“[B]efore there can be substantial compliance, there must be some attempt to comply with the statute.”)

It would appear axiomatic that if the School Board did not substantially comply with RCW 28A.645.020 there was not an adequate record before the Superior Court upon which to decide an appeal. Wash. Const. art. IV, § 6.<sup>4</sup> *Fay v. Northwest Airlines, Inc.*, 115 Wn.2d 194, 197, 796 P.2d 412 (1990) (When hearing appeals all statutory procedural requirements must be met before the Superior Court's appellate jurisdiction is properly invoked.).

Jurisdictional requirements of appeal statutes must be strictly complied with. *Haynes v. Seattle School District*, 111 Wn.2d 250, 254, 758 P. 2d 7 (1988). Procedural requirements necessary to fulfill the

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<sup>4</sup> Article IV, § 6 of the Washington Constitution grants the superior court original jurisdiction and appellate jurisdiction. With regard to appellate jurisdiction the Constitution provides:

“They [superior courts] shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law.”

purposes of appeal statutes must be substantially complied with. *Conom v. Snohomish County*, 155 Wn.2d 154, 157, 118 P.3d 344 (2005); *Keep Watson Cutoff Rural v. Kittitas County*, 184 P.3d 1278, 145 Wn. App. 31 (2008)<sup>5</sup>.

It is appellants' position that the administrative record requirements set forth in RCW 28A.645.020 were intended to be jurisdictional given that all judicial power is delegated to the judiciary, Wash. Const. art IV, § 1, and our judicial system requires a record upon which an appeal must be decided. *Neah Bay Chamber of Commerce v. Department of Fisheries*, 119 Wn.2d 464, 474, 832 P.2d 1310 (1992); *Loveless v Yantis*, 82 Wn.2d 754, 762 - 763 (1973). *See also Board of Regents of University of Washington v. City of Seattle*, 108 Wn.2d 545, 556, 741 P.2d 11 (1987) (Whether [the] ordinance ... is quasi-judicial or legislative in nature, we are unable to review it absent a record of the City's proceedings.)

### **III. Separation of Powers**

The Superior Court violated the separation of powers doctrine by

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<sup>5</sup> In *Conom* the Supreme Court reasoned that LUPA's 7 day preliminary filing requirement did not require substantial compliance because it was not essential to the fulfillment of the statute's objectives. That rationale does not apply to the administrative record requirements imposed by .020 as the record is an essential aspect of any appeal brought pursuant to RCW Chapter 28A.645.

hearing an appeal based on an administrative record that did not comply with RCW 28A.645.020.

The Separation of Powers doctrine is incorporated into the Washington Constitution. *Hale v. Wellpinit Sch. Dist. No. 49*, 165 Wn.2d 494, 506, 198 P.3d 1021 (2009). "[T]he drafting of a statute is a legislative, not a judicial, function." *Sedlacek v. Hillis*, 145 Wn.2d 379, 390, 36 P.3d 1014 (2001) (quoting *State v. Jackson*, 137 Wn.2d 712, 725, 976 P.2d 1229 (1999) (quoting *State v. Enloe*, 47 Wn. App. 165, 170, 734 P.2d 520 (1987))). The fundamental function of the judicial branch is to interpret the law and perform judicial review pursuant to Article IV of the Washington Constitution. *Hale v. Wellpinit Sch. Dist. No. 49*, 165 Wn.2d 494, 505, 198 P.3d 1021<sup>6</sup>.

The legislature enacted RCW Chapter 28A.645 setting forth the procedure for appealing a School Board decision. RCW 28A.645.010 requires appellants to file a notice of appeal within 30 days after the

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<sup>6</sup> School districts are not a branch of government. Rather they are municipal or quasi-municipal corporations. *Noe v. Edmonds Sch. Dist. No. 15*, 83 Wn.2d 97, 103, 515 P.2d 977 (1973). A School Board can exercise only such powers as the Legislature has granted in express words, or those "necessarily or fairly implied in or incident to the powers expressly granted, and also those essential to the declared objects and purposes of the corporation." *Municipality of Metro. Seattle v. Division 587, Amalgamated Transit Union*, 118 Wn.2d 639, 118 Wn.2d 639, 643, 826 P.2d 167 (1992).

decision being appealed is made. RCW 28A.645.020 requires (1.) that the District file a complete administrative record within 20 days after a complaint is filed; and (2.) that such filing be certified to be correct. The Superior Court did not have the authority to re-write RCW 28A.645.020 simply because the School Board asked it to. Under the separation of powers doctrine courts do not have and cannot be given legislative or administrative power. *Household Finance Corp. v Washington*, 40 Wn.2d 451, 455 – 8, 244 P.2d 260 (1952); *In State ex rel. Foster-Wyman Lumber Co. v. Superior Court*, 148 Wn. 1, 5 – 7, 267 P. 770 (1928).

This Superior Court had a duty to follow the plain language of RCW 28A.645.020 and require the School Board to file a properly certified administrative record within twenty days. *See State Dept. of Ecology v. Campbell & Gwinn, LLC.*, 146 Wn.2d 1, 9 - 10, 43 P.3d 4 (2002) ("If the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent."). The Superior Court did not have authority to contravene a constitutional statute setting forth the limits of its appellate jurisdiction. Wash. Const. art. IV, § 6. Especially is this so with regard to statutes which are enacted pursuant to the legislature's duty under Wash. Const. art. IX, § 2 to enact statutes providing for a "general and uniform system of public schools". *See, e.g., Brown v. State*,

155 Wn.2d 254, 261 - 262, 119 P.3d 341 (2005), where a unanimous Court stated:

This court will not micromanage education and will give great deference to the acts of the legislature. *See Seattle Sch. Dist.*, 90 Wn.2d at 518-19, 585 P.2d 71. However, it is uniquely within the province of this court to interpret this state's constitution and laws. *Cf. Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L.Ed. 60 (1803).

Certainly, one can understand why Superior Court judges might not want to overrule local School Board decisions. *Andersen v. King County*, 138 P.3d 963, 992 (2006) (Johnson concurring). But the judiciary's duty is to abide by the will of the legislature as expressed by statute unless the statute is unconstitutional. *Id.* at 968. The cost of King County Superior Court judges routinely not applying laws to the Seattle School Board is that the School Board will ignore or refuse to comply with statutes. *See Auditor Report*, CP 171:19 - 22; 184. ("The School Board and District management have not implemented sufficient policies and controls to ensure the District complies with state laws, its own policies, or addresses concerns of prior audits.").<sup>7</sup>

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<sup>7</sup> Appellants assert that the Superior Court should have admitted the Auditor's Report as evidence relating to appellants' motion for summary judgment that the School Board did not have sufficient procedures in place to comply with RCW 28A.645.020 and as a result did not comply with the statute. RCW 43.09.180 provides:

#### IV. Access to Justice

Appellants contend Wash. Const. art. I, § 10 affords them the right to litigate an appeal based on a record that complies with RCW 28A.645.020. In this regard, this appeal involves many of the same issue as were involved in *Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 782, 819 P.2d 370(1991). In *Doe* the Supreme Court observed that the right to access to the courts is created by statutes like section .020. In this regard, the Supreme Court stated:

The right of access is necessarily accompanied by those rights accorded litigants by statute, court rule or the inherent powers of the court, for example, service of process, RCW 4.28, or statutes of limitation. RCW 4.16 may be in aid of or limitation of a particular cause of action. The merits of a particular action may depend upon statute. e.g., RCW 4.24. The recognition of a particular cause of action may depend upon judicial decisions. *E.g.*, *Merrick v. Sutterlin*, 93 Wn.2d 411, 610 P.2d 891 (1980) (no parental immunity when child injured as result of negligent driving by parent); *Jenkins v. Snohomish Cy. PUD 1*, 105 Wn.2d 99, 713 P.2d 79 (1986) (parental immunity applies where injury results from negligent parental supervision of child).

These statutes and cases are cited to illustrate that access does not carry with it any guaranty of success, but also to demonstrate that access must be

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The state auditor shall keep a seal of office for the identification of all papers, writings, and documents required by law to be certified by him or her, and copies authenticated and certified of all papers and documents lawfully deposited in his or her office shall be received in evidence with the same effect as the originals.

exercised within the broader framework of the law as expressed in statutes, cases, and court rules.

Under the reasoning set forth in *Doe* regarding the right of access to evidence under the discovery rules, section .020 provided Appellants with the right to litigate an expeditious appeal based on a timely filed record that the District certifies is “correct” and which presumably is “correct”. Access to a “correct” transcript of evidence in an appeal is the equivalent of access to that evidence which can be garnered through discovery. *Doe* stands for the proposition that access to those facts necessary to prosecute a judicial action is a right guaranteed litigants pursuant to Wash. Const. art. I, § 10.

The Superior Court's error was prejudicial because Appellants were unconstitutionally required to prepare for an appeal based on an untimely record the District refused to certify as “correct.” *See Magana v Hyundai Motor Company*, 167 Wn.2d 570, 590, 220 P.3d 191 (2009) (failure to provide access to facts necessary to prepare for trial constitutes prejudice sufficient to sustain default judgment.)

#### **V. Due Process**

The State may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; Wash. Const. art. I, § 3. “‘A liberty interest may arise from the Constitution,’ from

‘guarantees implicit in the word "liberty," or ‘from an expectation or interest created by state laws or policies.’" *In re McCarthy*, 161 Wn.2d 234, 240, 164 P.3d 1283 (2007) (quoting *Wilkinson v. Austin*, 545 U.S. 209, 221, 125 S.Ct. 2384, 162 L.Ed.2d 174 (2005)). Appellants assert that RCW 28A.320.015(2) and RCW 28A.645.020 each afford them a liberty interest in the School Board having a process in place so as to (1.) afford School Board members with access to public comment during the decision-making process and (2.) provide a reviewing court with a record that can be certified "to be correct".

The Superior Court erred by ignoring Appellants' claims the District violated the due process rights of Appellants to have their comments included as part of the administrative record the School Board utilized in making the challenged decisions. This was error because an administrative record the School Board "assembles" after decision-making has occurred to justify its decision to the Superior Court constitutes arbitrary and capricious decision-making. *Cf. Palermo at Lakeland, LLC v. City of Bonney Lake*, 193 P.3d 168, 174-7, 147 Wn. App. 64 (2008) *review denied* 208 P.2d. 1123 (2009). (It is not appropriate for a court to sanction a municipality's use of evidence created after a decision has occurred as a basis for justifying the original decision.)

RCW 28A.320.015 (2) provides that before adopting policy “[t]he board of directors shall provide a reasonable opportunity for public written and oral comment and *consideration of the comment* by the board of directors.” [Emphasis Supplied] It is Appellants' position the School Board fails to provide citizens with a reasonable opportunity to comment and for the School Board to consider such comment when it fails to keep an administrative record and/or index system containing the papers, evidence, and exhibits submitted by the public during the decision-making process.

An administrative record that is used for purposes of decision-making should not be assembled “after the fact” because it is supposed to be in existence at the time the board members vote on the decision. Indeed, Chapter RCW 28A.645 contemplates that the administrative record will be the basis for the decision-making and that such record can promptly be made available to the Superior Court if an appeal is filed.

It was error for the Superior Court to decide an appeal as to whether a School Board's legislative decision was arbitrary and capricious based on evidence that was not available to the entire School Board during the decision-making process. CP 167 - 168. But this is exactly what the School Board asked the Superior Court to allow.

The District's own evidence establishes that the Court was never intended to be given the evidence, exhibits, and papers the School Board actually considered in making its decision. CP 2. Rather an attorney for the District testified he directed his

staff to assemble the necessary documents that comprise the administrative record. The administrative record to be assembled includes transcripts of board meetings, numerous documents provided to the School Board, documentation of open public meetings regarding the matters appealed, supporting documentation regarding the challenged decisions, and thousands of emails to School Board members, public comment cards received by the District and many other documents....<sup>8</sup>

In addition to violating Appellant's liberty interest in the School Board having access to evidence, exhibits, and papers submitted for

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<sup>8</sup> The District misses the point of creating an administrative record. It is not just for a court to review. An administrative record assembles the evidence upon which legislative decisions, *i.e.* those decisions which prescribe rules for the future, are to be based. Such a record also provides the basis for review of such decisions where the Legislature has provided for appeals. *See City of Tacoma v. O'Brien*, 85 Wn.2d 266, 534 P.2d 114 (1975) citing *Prentis v. Atlantic Coast Line Co.*, 211 U.S. 210, , 226, 29 S.Ct. 67, 69 (1908) for a discussion of the differences between Legislative and Judicial fact finding. The creation and maintenance of an administrative record during the decision-making process is essential for administrative and municipal decision-makers to comply with the legislative responsibilities delegated to School Board by law. These duties include those set forth in RCW 28A.645.020.

purposes of decision-making during the decision-making process, Appellants likewise assert that RCW 28A.645.020 required the School Board to have in place a system for complying with the statute's certification requirements. Appellants claim that the School Board's failure to provide such a system denied their liberty interest in obtaining that access to the Courts which the Legislature gave them by enacting RCW 28A.645.020. *See Mission Springs, Inc. v. City of Spokane*, 134 Wn.2d 947, 962 - 966, 954 P.2d 250 (1998)(Failure to follow mandates of statute denied developer the process which was due.)

Appellants note that the Commissioner questioned whether the timeliness language of RCW 28A.645.020 imposed a requirement upon the District to keep a contemporaneous administrative record. CP, 168 - 169. However, the Commissioner's ruling did not purport to resolve this issue. CP 169.

Since the Commissioner's ruling the Supreme Court has decided *Humphrey Industries, Ltd. v. Clay Street Associates, LLC*, supra., relating to the interpretation of time limits in statutes. *See supra.* Additionally, the School Board ultimately refused to certify the record in this appeal "to

be correct," as the Commissioner found was required to be done by RCW 28A.645.020. CP 168<sup>9</sup>.

As the Commissioner notes the law is well established law that when performing appellate review a Superior Court must review the record that was utilized by municipal or administrative decision-makers in arriving at

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<sup>9</sup> The Commissioner observes:

Petitioners [Appellants] correctly assert that a reviewing court needs to review all of the essential evidentiary material upon which an administrative body based its decision. *See Neah Bay Chamber of Commerce v. Department of Fisheries*, 119 Wn.2d 464, 474, 832 P.2d 1310 (1992); *Loveless v Yantis*, 82 Wn.2d 754, 762 - 763 (1973). CP 168 – 169.

After quoting this Constitutional principle, the Commissioner goes on to observe that "petitioners cite no authority supporting the notion that a School Board must maintain a contemporaneous record of all submissions for every decision...", *id.*, and there is no evidence that the legislature contemplated this. *Id.* But it should be noted that the principle the Commissioner asserts, *i.e.*, "that a reviewing court needs all of the essential evidentiary material upon which an administrative agency based its decisions," is a Constitutional floor. Were the legislature to attempt to give the Superior Court the power to make decisions on whatever evidence the School Board can provide or on whether the School Board acted reasonably such a statutory provision would constitute an unconstitutional delegation of legislative power to the judiciary. *Household Finance Corp. v Washington*, 40 Wn.2d 451, 455 - 8, 244 P.2d 260 (1952); *State ex rel. Foster-Wyman Co. v Superior Court*, 148 Wn. 1, 6 - 7, 267 P. 770 (1928); *State ex rel. Klise v. Town of Riverdale*, 244 Iowa 423, 57 N.W.2d 63 (1953) (Determination of what is "desirable" is not justiciable.)

Section .020's requirement that filings shall be certified "to be correct" is the only standard the legislature has imposed to assure a constitutionally adequate record for purposes of judicial review.

their decision. CP 167 - 168. This is required by the role a court plays in the performance of appellate judicial review as part of the Separation of Powers. The judicial department does not determine whether the School Board's decision was reasonable. *Neah Bay Chamber of Commerce v. Dept. of Fisheries*, 119 Wn.2d 464, 474, 832 P.2d 1310 (1992). *The judicial department only has authority to review the administrative record that the School Board directors considered to determine whether those decisions were contrary to law or arbitrary and capricious. Id.* Without access to the administrative record the School Board actually utilized to make the decisions being challenged in this appeal, the judicial department cannot perform its limited, but important constitutional responsibilities. *Id.* See also *Board of Regents of University of Washington v. City of Seattle*, 108 Wn. 2d 545, 741 P.2d 11 (1987) (Whether [the] ordinance ... is quasi-judicial or legislative in nature, we are unable to review it absent a record of the City's proceedings.)

The due process violations set forth above were prejudicial because the absence of a system for creating an administrative record prevented the School Board from adequate consideration of public comment. Additionally, the violations are also prejudicial for the reasons set forth at page 24.

**VI. What are the Consequences of the School Board's Refusal to Comply with RCW 28A.645.020?**

In this appeal before the Superior Court the School Board refused to submit a timely record which was certified "to be correct" and Scott Stafne, the attorney for the Appellants, refused to participate in briefing the merits of the appeal because the administrative record did not comply with RCW 28A.645.020. Stafne asserted that he had an ethical duty not to argue the merits of the appeal based on a record the School Board refused to certify to be correct. CP 357:2 - 359:23. Stafne urged the Court to allow lay persons, who had no such ethical duties, to argue Appellants' appeal on the basis of the inadequate record. CP, 360:1 - 362:22. Unlike the judges in the previously discussed School Board related cases who allowed pro se appellants to brief and argue their appeal based on an untimely and improperly certified record, the Superior Court dismissed Appellants' appeal because it believed Stafne's refusal to file a brief constituted abandonment of appellants' appeal. CP, p. 56.

What should be done?

We know if appellants had missed the filing deadline set forth in RCW 28A.645.010, their appeal would have been dismissed because the legislature has made the timely filing of an appeal a predicate to the Court's authority to decide an appeal. *Haynes v Seattle School District*,

111 Wn.2d at 254. But what happens if a court loses the ability and authority to decide an expeditious appeal because a School Board intentionally refuses to comply with the record requirements established by the legislature. The cases cited by the Commissioner at the top of CP 168 provide the answer.

In *Neah Bay Chamber of Commerce v. Dept. of Fisheries*, supra, the Supreme Court refused to decide whether an administrative agency acted arbitrarily and capriciously in the absence of an adequate administrative record supporting an agency's decision-making. In that case, which involved much less egregious facts than those involved here, the Supreme Court invalidated the agency's legislative decision and remanded the issue back to the decision-maker to create an adequate record. In doing so the Supreme Court stated:

Although it is impossible to tell without the administrative record whether or not the procedures of the APA were followed in this case, neither party suggests that they were not, and the trial court did not consider the issue. We note, however, that lack of a rulemaking file may itself constitute a sufficient reason to invalidate a regulation. RCW 34.05.375.

In accordance with the foregoing, we reverse the trial court and remand for reconsideration.

*Neah Bay*, 119 Wn.2d at 476 – 477.

The issue of an inadequate record also arose in *Loveless v Yantis*, 82 Wn.2d 754, 832 P.2d 1033 (1973). The Supreme Court held that where the failure to provide an adequate record prevented meaningful judicial review municipal decision-making must be vacated. *Id.* at 762 - 763. In *Loveless* the Supreme Court stated:

The essence of the trial court's ruling was that the commissioners' decision was arbitrary and capricious. We find it impossible to intelligently review the commissioners' decision because of an incomplete and inadequate record.

Courts reviewing the proceedings of planning commissions and county commissioners in zoning cases are normally restricted to a consideration of the record made before those groups. *Bishop v. Houghton*, 69 Wn.2d 786, 520 P.2d 368 (1966); RCW 58.17.100. Incomplete records make appellate review impossible and where a 'full and complete transcript of the records and proceedings had in said cause' is ordered by the superior court and cannot be furnished, ***the actions of those boards have been vacated.*** *Beach v. Board of Adjustment*, 73 Wn.2d 343, 438 P.2d 617 (1968). Such is the case here.

*Id.* at 762.

Under the above authority the Superior Court erred when it did not vacate the District's rule making pursuant to Appellants objection to the District's motion for an extension of time to "assemble" an administrative record. The Superior Court also erred when it failed to vacate the School Board's decisions pursuant to Appellants' motion for summary judgment

that the School Board had failed to certify the administrative "record to be correct".

**VII. Stafne has Standing to Challenge the Superior Court's Decision Dismissing Appellants' Appeal Based upon the Legal Conclusion he Abandoned their Case.**

Under RAP 3.1, "only an aggrieved party may seek review by the appellate court." *City of Tacoma v. Taxpayers of City of Tacoma*, 108 Wn.2d 679, 685, 743 P.2d 793 (1997). "An aggrieved party is one who proprietary, pecuniary, or personal rights are substantially affected." *Breda v. B.P.O. Elks Lake City*, 120 Wn. App. 351, 353, 90 P.3d 1079 (Wn. App. Div. 1, 2004) (citing *Cooper v. City of Tacoma*, 47 Wn. App. 315, 316, 734 P.2d 541 (1987); *Sheets v. Benevolent Protective Order of Keglars*, 34 Wn.2d 851, 855, 210, P.2d 690 (1949)).

Should an attorney be sanctioned, that attorney "becomes a party to an action and thus may appeal as an aggrieved party." *Breda v. B.P.O. Elks Lake City*, supra, note 3 (citing *Splash Design, Inc. v. Lee*, 104 Wn. App. 38, 44, 14 P.3d 879 (2000)). An attorney may appeal such sanctions on his own behalf, but may not appeal "decisions that solely affect his clients because his rights are not affected by the rulings and he is not an aggrieved party under Rap 3.1." *Id.* (citing *Johnson v. Mermis*, 91 Wn.App. 127, 955 P.2d 826 (1998) (attorney could appeal CR 11 and CR 37 sanctions, but could not appeal the trial court's denial of his client's motion to strike the trial date, its dismissal of his client's third party claims or its exclusion of one of his client's witness's testimony as a discovery sanction)). An attorney must appeal on his own behalf (not his client's behalf) when appeal sanctions are imposed. *Id.*

In *In re Guardianship of Lasky*, 54 Wn. App. 841, 848, 776 P.2d 695 (1989), the court specifically allowed an attorney to seek an appeal as an aggrieved party when the trial court denied attorneys fees and imposed CR 11 sanctions against him by order. The court further clarified that the order imposing fees and sanctions substantially affected a pecuniary right to fees. *Id.*

In this appeal the Superior Court specifically dismissed Appellants' appeal because their attorney, Stafne, refused to participate in briefing an appeal based on a record that he believed did not comply with RCW 28A.645.020. Stafne's belief in this regard was based on, among other things, the Commissioner's statements in three cases that pursuant to RCW 28A.645.020 the school board must file a record that is certified "to be correct." The Superior Court held that Stafne's refusal to prepare a brief constituted abandonment of his clients' appeal. Specifically, the Superior Court stated:

The first reason that this motion is granted is because the appellant attorney stated on the record at the hearing that he did not file his brief because he did not intend to pursue the claim because he felt he was precluded from doing so by per court order of this and the appellate court. This court considers the appellant to have thus abandoned the claim.

CP 586.

Stafne would ask the Court take judicial notice that he is admitted to practice law the State of Washington. Stafne contends that the Superior Court's conclusion that he abandoned his clients was error under the circumstances of this case. Stafne further contends the Superior Court's ruling that he abandoned his clients cast aspersions upon his good name and reputation as a lawyer. This, in turn, affects his livelihood and suggests that he has acted in an incompetent manner. *See* RPC 1.1, which states:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

An attorney is aggrieved pursuant to RAP 3.1 when a Court signs an order which declares an attorney has acted unethically. Moreover, the Court's conclusion that Stafne abandoned his clients appears especially unfair as the record before the Court shows that Stafne had filed two discretionary review actions and an extraordinary writ against three judges (including the Judge in this case) regarding the issues which prompted him to refuse to participate in the merits of what he believed was an illegal appeal. *See* CP 165 - 169, 250 - 254, and 259 - 264. Stafne's good faith in taking this position is bolstered by the fact that the Commissioner unequivocally stated in all three actions that the school board must certify

the record to be correct in order to comply with RCW 28A.645.020. *See* CP 168, 243, 263.

Stafne contends that he did not abandon Appellants by refusing to participate in an illegal appeal proceeding and that therefore the Superior Court's order must be reversed.

As an advocate a lawyer must conscientiously and ardently assert the clients position under the rules of the adversary system. It is also the role of a lawyer, as an officer of the court, to maintain the honor and dignity of their profession as essential agents of the administration of justice and act with integrity.

The Washington Rules of Professional Conduct (RPC) prohibit a lawyer from presenting false evidence. Stafne contends that evidence which has not been certified to be correct pursuant to RCW 28A.645.020 is false evidence for purposes of an appeal brought pursuant to RCW Chapter 28A.645.020. Rule 3.3 provides in pertinent part:

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer:

\* \* \*

(4) offer evidence that the lawyer knows to be false.

(b) The duties stated in paragraph (a) continue to the conclusion of the proceeding.

\* \* \*

(d) If the lawyer has offered material evidence and comes to know of its falsity, and disclosure of this fact is prohibited by Rule 1.6, the lawyer shall promptly make reasonable efforts to convince the client to consent to disclosure. If the client refuses to consent to disclosure, the lawyer **may** seek to withdraw from the representation in accordance with Rule 1.16.

(e) A lawyer **may** refuse to offer evidence that the lawyer reasonably believes is false.

#### Comment

[1] [Washington revision] This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0(m)' for the definition of "tribunal."<sup>10</sup> It also applies when the lawyer is representing a client in an

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<sup>10</sup> Tribunal is defined to mean:

(m) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition.

[2] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

\* \* \*

#### Offering Evidence

[5] Reserved

[6] If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, **the lawyer must refuse to offer the false evidence.** If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

[7] [Washington Revision] The duties stated in paragraph (a) apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions other than Washington, however,

courts have required counsel to present the accused as a witness or to give a narrative statement if the accused so desires, even if counsel knows that the testimony or statement will be false. **The obligation of the advocate under the Rules of Professional Conduct is subordinate to such requirements.** See *State v. Berry Smith*, 87 Wn. App. 268, 944 P.2d 397 (1997), review denied, 134 Wn.2d 1008, 954 P.2d 277 (1998).

[8] The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 1.0(f)". Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

If a lawyer must not present false evidence in favor of his client, there is no good reason why he should have to argue an appeal based on an administrative record that has not been certified to be correct by his clients' adversary. RPC 3.3 allows a lawyer to refuse to participate in a proceeding which will be based on false evidence.

In this appeal, there was no reason Stafne had to withdraw or participate in an illegal appeal as the law clearly required the Superior Court to vacate the District's rule-making. Stafne simply held his ground against the Court, which he believed was acting beyond its authority.

Courts apply a stringent standard for determining whether a lawyer knew evidence was false before imposing an obligation to reveal client perjury. The lawyer is often required to have "a firm factual basis" for the belief that the client is committing perjury before any duty of disclosure arises. *United States ex rel. Wilcox v. Johnson*, 555 U.S. F.2d 115, 122 (3d Cir. 1977). As a result, it may only be the "unusual case" wherein the "knowing" standard of RPC 3.3 will be met. *ABA Formal Opinion 87-353* (April 20, 1987).

In this case Stafne clearly knew that the documents being offered as the Transcript of Evidence by the School Board did not comply with the timeliness and substance certification requirements of RCW 28A.645.020. He owed no duty to the District or any particular judge to ignore the District's ongoing violations of RCW 28A.645.020. Stafne fulfilled his duty as an officer of the Court by refusing to participate in appeal proceedings which violated RCW 28A.645.020, the separation of powers doctrine, and his clients' constitutional right to due process and access to the courts.

**VIII. The Superior Court Erred in Failing to Admit the Auditor's Report During the Summary Judgment Proceedings.**

RCW 43.09.180 provides:

The state auditor shall keep a seal of office for the identification of all papers, writings, and documents required by law to be certified by him or her, and copies authenticated and certified of all papers and documents lawfully deposited in his or her office shall be received in evidence with the same effect as the originals.

The Legislative and Executive branches of the State of Washington have enacted as statute allowing courts to receive auditor's report as evidence. The Auditor's report was relevant to the issues before the Court pursuant to the motion for summary judgment; namely, whether the School Board had procedures in place which would allow them to certify the record is correct.

**E. Conclusion**

This Court should issue an order which declares Stafne did not abandon his clients by failing to participate in an illegal appeal proceeding.

Respectfully Submitted this 1<sup>st</sup> day of February, 2011,

The Stafne Law Firm

  
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# APPENDIX

## **28A.645.010**

### **Appeals — Notice of — Scope — Time limitation.**

Any person, or persons, either severally or collectively, aggrieved by any decision or order of any school official or board, within thirty days after the rendition of such decision or order, or of the failure to act upon the same when properly presented, may appeal the same to the superior court of the county in which the school district or part thereof is situated, by filing with the secretary of the school board if the appeal is from board action or failure to act, otherwise with the proper school official, and filing with the clerk of the superior court, a notice of appeal which shall set forth in a clear and concise manner the errors complained of.

Appeals by teachers, principals, supervisors, superintendents, or other certificated employees from the actions of school boards with respect to discharge or other action adversely affecting their contract status, or failure to renew their contracts for the next ensuing term shall be governed by the appeal provisions of chapters 28A.400 and 28A.405 RCW therefor and in all other cases shall be governed by chapter 28A.645 RCW.

[1990 c 33 § 544; 1971 ex.s. c 282 § 40; 1969 ex.s. c 34 § 17; 1969 ex.s. c 223 § 28A.88.010. Prior: 1961 c 241 § 9; 1909 c 97 p 362 § 1; RRS § 5064. Formerly RCW 28A.88.010, 28.88.010.][SLC-RO-1.]

#### **Notes:**

**Severability -- 1971 ex.s. c 282:** See note following RCW 28A.310.010.

RCW 28A.645.010 not applicable to contract renewal of school superintendent: RCW 28A.400.010.

## **28A.645.020**

### **Transcript filed, certified.**

Within twenty days of service of the notice of appeal, the school board, at its expense, or the school official, at such official's expense, shall file the complete transcript of the evidence and the papers and exhibits relating to the decision for which a complaint has been filed. Such filings shall be certified to be correct.

[1971 ex.s. c 282 § 41. Formerly RCW 28A.88.013.]

**Notes:**

**Severability -- 1971 ex.s. c 282:** See note following RCW 28A.310.010.

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**28A.645.030**

**Appeal to be heard de novo and expeditiously.**

Any appeal to the superior court shall be heard de novo by the superior court. Such appeal shall be heard expeditiously.

[1971 ex.s. c 282 § 42. Formerly RCW 28A.88.015.]

**Notes:**

**Severability -- 1971 ex.s. c 282:** See note following RCW 28A.310.010.

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**28A.645.040**

**Certified copy of decision to county assessor when school district boundaries changed.**

In cases of appeal resulting in the change of any school district boundaries the decision shall within five days thereafter be also certified by the proper officer to the county assessor of the county, or to the county assessors of the counties, wherein the territory may lie.

[1969 ex.s. c 223 § 28A.88.090. Prior: 1909 c 97 p 364 § 8; RRS § 5071. Formerly RCW 28A.88.090, 28.88.090.]