

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
6/28/2024 3:24 PM  
BY ERIN L. LENNON  
CLERK

NO. 1030673

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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STEVE HAILEY,

Petitioner,

v.

WASHINGTON STATE EXECUTIVE ETHICS BOARD,

Respondent.

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**ANSWER TO PETITION FOR REVIEW**

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## **I. INTRODUCTION**

Mr. Hailey appeals the superior court's routine denial of his request for a continuance. Upon the Executive Ethics Board's decision that he violated the Ethics in Public Service Act, Mr. Hailey filed a petition for judicial review in superior court. After he had ample time to prepare, Mr. Hailey missed the deadline to file his brief, and failed to appear at the hearing. The superior court then denied Mr. Hailey's untimely motion for a continuance, finding there was no good cause to move the hearing. The Court of Appeals agreed and affirmed the decision.

Without citation to any of the grounds required for discretionary review found in RAP 13.4, Mr. Hailey now seeks this Court's review. As the Court of Appeals correctly held, the superior court acted well within its discretion when it denied Mr. Hailey's untimely request for a continuance. Further, as Mr. Hailey failed to brief the merits of the superior court's dismissal of his petition for judicial review, he abandoned that issue on appeal.

Because Mr. Hailey's Petition for Review does not include any legal authority, nor any identifiable grounds for this Court to accept discretionary review, review should be denied.

## **II. STATEMENT OF THE ISSUES**

1. Whether the superior court properly exercised its discretion when denying Mr. Hailey's untimely motion for continuance.
2. Whether Mr. Hailey has abandoned any challenge to the superior court's dismissal of his petition by failing to brief the issue on appeal.

## **III. STATEMENT OF THE CASE**

### **A. The Executive Ethics Board's Role in Enforcing the Ethics in Public Service Act**

The Executive Ethics Board is vested with the authority to enforce the Ethics in Public Service Act (Ethics Act), RCW 42.52<sup>¶</sup>, which applies to all state elected officers, as well as all other officers and employees in the executive branch, boards and commissions, and institutions of higher education.

RCW 42.52.360(1). The Board is comprised of five members: one classified service employee; one state officer or employee in an exempt position; one attorney general appointee; one state auditor appointee; and one governor appointee. RCW 42.52.350. Among other duties, the Board has the authority to hold hearings. RCW 42.52.390; *see also* RCW 42.52.360(3). An administrative law judge (ALJ) sits with the Board and rules on procedural and evidentiary matters. *See generally* RCW 42.52.500, WAC 292-100-160(3). In addition, the Board is authorized to order payment of damages that result from a violation, or impose civil penalties for violations of the Ethics Act. RCW 42.52.480(1). Liberal construction of the Ethics Act to effect its purpose and policy is mandated by statute. RCW 42.52.901.

**B. The Executive Ethics Board's Final Order Penalizing Mr. Hailey for Violations of the Ethics in Public Service Act**

At all times relevant to the administrative proceeding, Mr. Hailey was a full-time faculty member of the Computer Information Program at Edmonds Community College (ECC).



CP 94. The Board received a referral from ECC in June of 2020 that alleged Mr. Hailey and another ECC faculty member, Mr. Andrew, may have violated the Ethics in Public Service Act, RCW 42.52, by using state resources to promote and support their outside business. CP 93.<sup>1</sup>

Following an investigation, the Board found reasonable cause to believe that a violation of RCW 42.52 was committed. CP 93. Mr. Hailey requested a hearing, and after proper notice, the Board held a hearing on Board Staff's motion for summary judgment. CP 93. The day before the administrative hearing, Mr. Hailey requested a continuance. CP 77. At the hearing, after questioning Mr. Hailey, the ALJ denied the request for a continuance. CP 77. The Board then heard argument on the summary judgment motion.

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<sup>1</sup> In a companion case, EEB No. 2020-039, the Board also found reasonable cause to believe Mr. Andrew violated the Ethics in Public Service Act.

Mr. Hailey did not file his own summary judgment motion, nor did he respond to Board Staff's motion for summary judgment. CP 94, CP 77. During his oral argument, Mr. Hailey admitted to storing documents with his outside business logo on ECC computers, to using his ECC email account to send emails on behalf of his outside business, and to using his ECC email to communicate with his brother. CP 79 – 80.

Following the hearing, the Board issued its Findings of Fact, Conclusions of Law, and Final Order which held that Mr. Hailey violated RCW 42.52.160(1) by using state resources for his personal benefit as well as to support his outside business. CP 97 – 98. Specifically, the Board found that Mr. Hailey stored a large volume of documents related to his outside business on ECC computers. CP 95. Further, the Board found Mr. Hailey used his ECC email account to support his outside business, as well as for personal reasons. CP 95. The Board imposed a penalty of \$5,500: \$3,000 for Mr. Hailey's misuse of state resources in

support of his outside business, and \$2,500 for his misuse of his state email for his personal benefit. CP 98.

**C. The Superior Court's Dismissal of Mr. Hailey's Petition for Judicial Review, and the Court of Appeals's Affirmance**

Mr. Hailey filed a petition for judicial review in Snohomish County Superior Court. CP 90 – 92. After the agency record was filed, the Board moved to set a briefing schedule and hearing date. CP 44, 81. A hearing on the Board's motion was set for June 2, 2022. CP 45. Without responding to the motion, Mr. Hailey filed a notice of unavailability, stating that he would be unavailable for a hearing from June 22 to September 5, 2022. CP 44-45. Mr. Hailey failed to appear at the scheduling hearing on June 2, 2022, but the court directed the Board to file a note for trial setting in the fall when Mr. Hailey would be available, which the Board did. CP 45, 81.

A judge was assigned on December 13, 2022, and deadlines for briefing were set using the format for a CR 56 motion schedule. CP 48, 55. The hearing was scheduled for

March 27, 2023, which meant Mr. Hailey's deadline to file a brief was February 27, 2023. CP 55, 60. However, Mr. Hailey did not file a brief. CP 6. The Board reached out to Mr. Hailey on March 1, 2023, to inform him of the missed briefing deadline. CP 60. Mr. Hailey informed the Board he planned to file a request for a continuance, and the Board responded that it would oppose that request. CP 67.

More than two weeks after the briefing deadline had elapsed, on March 15, 2023, Mr. Hailey moved for a continuance. CP 41. He also filed a motion to "Seal Court Records Containing Personal Medical Information," as he wished to keep his included medical records private. CP 41, 25. In a declaration, Mr. Hailey discussed medical issues he has had since 2019 and medical issues he was diagnosed with as of January 2023. CP 28 – 29.

The superior court denied the continuance. CP 20. In its order, the superior court noted that in the preceding three months, Mr. Hailey raised no issues or concerns about his ability to timely

file a brief or proceed with a hearing. CP 21. The Court also noted that Mr. Hailey had over twelve months to file a brief and prepare for a hearing on the merits. *Id.*

In accordance with the briefing schedule, the Board filed its brief in response to the petition for judicial review, along with a supporting declaration. CP 75 – 89; CP 44 – 74. At oral argument on March 27, 2023, Mr. Hailey did not appear. CP 8. Instead, he filed an amended motion for continuance renewing his previous request and another motion to “Seal Court Records Containing Personal Medical Information.” CP 12 –16; CP 9 -11.

The superior court dismissed the petition with prejudice. CP 7. In its order, the superior court held that Mr. Hailey “failed to meet his burden to demonstrate how the Respondent’s Final Order was invalid as required by RCW 34.05.570(1)(a) and (3)”. *Id.* )) The superior court also determined that there was no good cause for a continuance, as Mr. Hailey “has had over a year to prepare his case and/or obtain legal counsel.” *Id.* ))

The Court of Appeals affirmed the superior court's decision to deny the motion to continue. The Court of Appeals also held that by failing to brief any challenge to the superior court's dismissal of his petition, Mr. Hailey had abandoned that issue on appeal. *Hailey v. Washington State Executive Ethics Board*, 2024 WL 1050007 (2024) (not reported), Appendix. The Court of Appeals then denied Mr. Hailey's motion for reconsideration, and Mr. Hailey now seeks this Court's discretionary review.

#### **IV. MR. HAILEY FAILS TO ESTABLISH A BASIS FOR REVIEW**

Mr. Hailey neglects to demonstrate any basis for this Court to grant discretionary review, as required under RAP 13.4. He does not cite any conflicting decision of the Supreme Court; he does not point to any conflicting decision of the Court of Appeals; he has not raised a significant question of law under the Washington Constitution or the United States; and he has not raised an issue of substantial public interest that should be decided by the Supreme Court. RAP 13.4(b). To the contrary, as

the Court of Appeals held, the superior court appropriately exercised its discretion in denying Mr. Hailey's untimely and unsupported motion for a continuance, and this Court's review is not warranted.

**A. The Superior Court Acted Within Its Discretion When It Denied Mr. Hailey's Motion for a Continuance**

As the Court of Appeals correctly held, the superior court did not manifestly abuse its discretion by denying Mr. Hailey's motion to continue; Mr. Hailey does not cite any authority that would entitle him to reversal of that decision and remand back to the superior court. *Hailey*, 2024 WL 1050007 (2024) (not reported), Appendix. A manifest abuse of discretion occurs if "no reasonable [person] would take the view adopted by the trial court." *Eagle Pac. Ins. Co. v. Christensen Motor Yacht Corp.*, 85 Wn. App. 695, 709, 934 P.2d 715, 722 (1997), *aff'd*, 135 Wn.2d 894, 959 P.2d 1052 (1998). Although courts on review afford "liberal consideration" to a continuance requested for a party's inability to appear due to illness, it is still appropriate to

consider the continuance motion “against the background of [the] circumstances and facts” of that proceeding. *Odom v. Williams*, 74 Wn.2d 714, 717–18, 446 P.2d 335 (1968) (affirming the denial of a continuance motion based on a party’s failure to appear for trial due to illness).

In this case, Mr. Hailey has not identified any circumstances in the record that render the denial of his continuance request unreasonable. Nor has he identified any untenable grounds relied upon by the superior court in issuing the denial. Starting from February 2022 when Mr. Hailey filed his Petition for Review, he had over a year to prepare substantive pleadings in superior court, but he did not submit any. CP 6 – 7. Instead, he filed only a notice of unavailability and two motions for continuance. CP 17, 41, 45, 90. Mr. Hailey also failed to appear at the scheduling hearing on June 2, 2022. CP 45. After a judge was assigned, the court considered the parties’ availability and set a hearing date and briefing schedule. CP 48, 55.



Nevertheless, Mr. Hailey filed his motion for continuance two weeks after missing the brief deadline. CP 41.

Mr. Hailey now states that his health and medical issues prevented him from completing his brief in superior court. Petition for Review 8. Before the superior court, he submitted a declaration noting health conditions that arose in 2019 and January of 2023, which gave him ample time to request a continuance prior to his briefing deadline. CP 28. Yet Mr. Hailey did not contact the Board about a continuance until two weeks after the briefing deadline had passed, in March 2023; even then only after the Board informed him of the missed deadline. CP 59. Nor did he specify in any of his motions how his medical issues prevented him from working on a brief from the time the schedule was set until the week prior to the deadline. CP 12-16, 41- 43. Finally, Mr. Hailey did not attend the merits hearing on March 27, 2023, and in his motion, did not explain nor give notice that he could not appear at the hearing. CP 8, 41 – 43. As the superior court also noted, Mr. Hailey had similarly failed in

the administrative proceeding to file any substantive briefing, and he had also submitted a late request for a continuance there. CP 21.

It was reasonable for the superior court to consider the facts and deny Mr. Hailey's untimely request for a continuance. The superior court did not abuse its discretion, and Mr. Hailey is unable to establish any of the grounds necessary for this Court to accept review under RAP 13.4.

**B. Mr. Hailey Has Abandoned Any Challenge to the Merits of the Board's Decision**

Mr. Hailey did not provide any argument to the Court of Appeals, nor to this Court, regarding the superior court's dismissal of the merits of his petition. Because he has not briefed that issue, he has abandoned it on appeal. *Greensun Grp., LLC v. City of Bellevue*, 7 Wn. App. 2d 754, 780 n.11, 436 P.3d 397 (2019). As a result, even if the superior court's denial of the motion for a continuance was somehow improper, the dismissal of the petition should be affirmed by this Court.

Regardless, there is no basis for this Court to disturb the Board's Final Order. Under the APA, the burden of demonstrating the invalidity of the Board's action is on Mr. Hailey. RCW 34.05.570(1)(a). When an agency issues a final order on summary judgment, a reviewing court "must overlay the APA standard of review with the summary judgment standard." *Skagit Cnty. V. Skagit Hill Recycling, Inc.*, 162 Wn. App. 308, 318, 253 P.3d 1135, 1140 (2011). Under that standard, both findings of fact and legal conclusions are reviewed de novo. *Verizon Nw., Inc. v. Washington Employment Sec. Dep't*, 164 Wn.2d 909, 916, 194 P.3d 255 (2008). The facts in the record are viewed in the light most favorable to the nonmoving party. *Verizon Nw.*, 164 Wn.2d 909 at 916.

The Board properly concluded Mr. Hailey violated RCW 42.52.160, which prohibits state employees from using state resources for their own private benefit or gain. CP 97. Mr. Hailey admitted he used both ECC computers and his ECC email account to support his outside business as well as for personal

reasons. CP 94 – 95, 97. Additionally, the Board found that based on both the volume of the use and the fact that Mr. Hailey supported his outside business through this use, he did not meet the criteria for allowable de minimis personal use under WAC 292-110-010(3). *Id.* Even viewing these facts in the light most favorable to Mr. Hailey, there was significant evidence of violations of RCW 42.52.160. Finally, the Board acted within its authority when it ordered Mr. Hailey to pay a civil penalty of \$5,500 for his violations of the Ethics Act: \$3,000 for his misuse of state resources to support his outside business, and \$2,500 for his misuse of his state email for his personal benefit. CP 98. Under RCW 42.52.480, the Board may impose a civil penalty of up to \$5,000 per violation or three times the economic value of anything received or sought in violation of the Ethics Act, whichever is greater. Pursuant to that authority, the Board appropriately exercised its discretion in levying its penalty in this matter.

Mr. Hailey has not challenged specific findings of fact or conclusions of law made by the Board. There was more than sufficient evidence of his personal use of state resources in violation of RCW 42.52.160, as the Board held in the Final Order. The Board levied an appropriate penalty based on Mr. Hailey's established violations of the Ethics Act. This Court's review of the Board's Final Order is therefore not warranted at this stage of the proceeding, especially where Mr. Hailey has failed to make any showing related to his burden of showing the Board's decision was erroneous.

## **V. CONCLUSION**

Mr. Hailey's Petition for Review lacks any basis under RAP 13.4(b) for this Court to accept review. The Petition should be denied.

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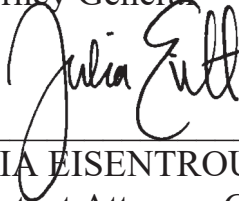
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This document contains 2747 words, excluding the parts  
of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 28th day of June,  
2024.

ROBERT W. FERGUSON  
Attorney General

A handwritten signature in black ink, appearing to read "Julia Eisentrout", is written over a horizontal line.

JULIA EISENTROUT, WSBA #42007  
Assistant Attorney General  
Attorneys for Respondent  
Washington State Executive Ethics Board

**PROOF OF SERVICE**

I declare under penalty of perjury under the laws of the state of Washington that on June 28, 2024, I served a true and correct copy of the *Answer to Petition for Review* by e-mail through the Court's e-filing system:

STEVE HAILEY  
17716 TROMBLEY RD  
SNOHOMISH, WA 98290

☒ Via Electronic Mail:  
steve.hailey@cybersecurityacademy.com

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

DATED this 28th day of June, 2024, at Olympia,  
Washington.

Shayla Staggers  
SHAYLA STAGGERS  
Paralegal

# APPENDIX



LEA ENNIS  
Court Administrator/Clerk

*The Court of Appeals  
of the  
State of Washington*

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March 11, 2024

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Case #: 852809

Steve Hailey, Appellant v. WA State Executive Ethics Board, Respondent  
Snohomish County Superior Court No. 22-2-00656-9

Counsel:

Enclosed is a copy of the opinion filed in the above-referenced appeal which states in part:

We affirm.

Counsel may file a motion for reconsideration within 20 days of filing this opinion pursuant to RAP 12.4(b). If counsel does not wish to file a motion for reconsideration but does wish to seek review by the Supreme Court, RAP 13.4(a) provides that if no motion for reconsideration is made, a petition for review must be filed in this court within 30 days.

In accordance with RAP 14.4(a), a claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed waived.

Should counsel desire the opinion to be published by the Reporter of Decisions, a motion to publish should be served and filed within 20 days of the date of filing the opinion, as provided by RAP 12.3 (e).

Sincerely,



Lea Ennis  
Court Administrator/Clerk

jh

c: The Honorable Millie Judge

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

STEVE HAILEY,

Appellant,

v.

WASHINGTON STATE EXECUTIVE  
ETHICS BOARD,

Respondent.

No. 85280-9-I

DIVISION ONE

UNPUBLISHED OPINION

MANN, J. — Steve Hailey appeals the trial court’s decision to deny his motion to continue. We affirm.

I

Following a hearing in 2022, the Executive Ethics Board (Board) concluded that Hailey, a full-time faculty member at Edmonds Community College, violated the Ethics in Public Service Act, ch. 42.52 RCW, by utilizing state resources to promote and support an outside business. The Board ordered Hailey to pay a civil penalty of \$5,500.

Hailey petitioned for judicial review in Snohomish County Superior Court. After the agency record was filed, the Board moved to set a briefing schedule and set a hearing date for June 2, 2022. Hailey did not respond to the motion but filed a notice of unavailability covering the dates of June 22 to September 5, 2022. Hailey did not

appear at the hearing on June 2 and the Board was advised to file a note for trial setting later that fall.

A judge was assigned in December 2022. Hailey and the Board agreed to a briefing schedule that mirrored a CR 56 briefing schedule with a hearing on the merits on March 27, 2023.

Hailey's brief was due on February 27, 2023, but he failed to meet this deadline. The Board e-mailed Hailey on March 1, stating they had not received his brief and they would be filing a responsive brief asking the court to dismiss the appeal. On March 6, Hailey responded stating that he would be submitting a motion to request a continuance. The Board informed Hailey that they would oppose his motion.

Hailey filed a motion for continuance on March 15, 2023, but failed to properly note it before the court. The trial court denied his motion on March 21, 2023.

Hailey failed to appear on March 27, 2023. Before the hearing, Hailey submitted an amended motion renewing his request for a continuance. Again, Hailey did not properly note the motion before the court.

The trial court found there was no good cause for a continuance and dismissed Hailey's petition for review with prejudice. Hailey appeals.

## II

"Continuances may be had upon a showing of good cause." Bramall v. Wales, 29 Wn. App. 390, 393, 628 P.2d 511 (1981). A trial court has the "discretionary authority to manage its own affairs so as to achieve the orderly and expeditious disposition of cases." Woodhead v. Disc. Waterbeds, Inc., 78 Wn. App. 125, 129, 896 P.2d 66 (1995). We review a trial court's decision to deny a motion to continue for an

abuse of discretion. State v. Kelly, 32 Wn. App. 112, 114, 645 P.2d 1146 (1982). A trial court manifestly abuses its discretion if no reasonable person would take the view adopted by the court. Eagle Pac. Ins. Co. v. Christensen Motor Yacht Corp., 85 Wn. App. 695, 709, 934 P.2d 715 (1997), aff'd, 135 Wn.2d 894, 959 P.2d 1052 (1998).

In denying his motion for a continuance, the trial court found that Hailey failed to file a brief within 45 days after filing his petition on February 4, 2020.<sup>1</sup> For 10 months, Hailey did not advise anyone that he could not proceed with the case due to health or other reasons. In December 2022, both parties agreed to a briefing schedule and a hearing on the merits on March 27, 2023. Hailey “raised no issues or concerns about his ability to timely file a brief or proceed with the hearing.” Hailey filed the motion to continue on March 15, 2023, but did not properly note it before the court.

The trial court explained, “[a]lthough it appears that [Hailey] may have some underlying health issues that may make it somewhat difficult for him to prepare his case, he has had over 12 months to file a brief and prepare for a hearing on the merits, during which time he did neither. The Court notes that this is the same pattern of behavior that he exhibited during the underlying proceeding before the Board.” The court concluded that Hailey “failed to present good cause as to why this matter should be continued further.”

Hailey also attempted to amend his motion to continue right before the March 27 hearing. Again, Hailey failed to properly note the motion. The trial court found “there is

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<sup>1</sup> Under the rules for appeal of decisions of courts of limited jurisdiction, the brief of an appellant is due within 45 days after filing the notice of appeal with the superior court. RALJ 7.2(a). The court may also issue a briefing schedule. RALJ 7.2(d).

no good cause for a continuance of proceedings as [Hailey] has had over a year to prepare his case and/or obtain legal counsel.”

Significantly, Hailey did not assign error to any of the trial court’s findings and conclusions, and as such, they are verities on appeal. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 808, 828 P.2d 549 (1992). And Hailey cites no authority in his opening brief. This court “will not consider an inadequately briefed argument.” Norcon Builders, LLC v. GMP Homes VG, LLC, 161 Wn. App. 474, 486, 254 P.3d 835 (2011); see also Cowiche Canyon, 118 Wn.2d at 809 (arguments unsupported by reference to the record or citation to authority will not be considered).

When a party had approximately one year to prepare a brief, knew of the deadline for two months, failed to meet the deadline before attempting to continue the hearing, and failed to properly note the hearing, we cannot say that the trial court abused its discretion by denying their motion to continue.

In his reply, Hailey emphasizes that he appears here pro se, however, it is well settled in the State of Washington that we hold pro se litigants to the same standards as attorneys. In re Decertification of Martin, 154 Wn. App. 252, 265, 223 P.3d 1221 (2009).

Hailey has failed to demonstrate that no reasonable judge would have reached the same conclusion as the trial court. The trial court did not manifestly abuse its discretion by denying Hailey’s motions to continue.<sup>2</sup>

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<sup>2</sup> In his conclusion, Hailey asks this court to reverse the trial court’s decision to dismiss his case with prejudice. However, Hailey has provided no argument on the dismissal and instead focused on his motions to continue. An issue not discussed in a party’s brief is considered abandoned. Greensun Grp., LLC v. City of Bellevue, 7 Wn. App. 2d 754, 780 n.11, 436 P.3d 397 (2019).

We affirm.<sup>3</sup>

Mann, J.

WE CONCUR:

Birk, J.

Smith, C.G.

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<sup>3</sup> Following submission of his reply brief and amended reply brief, Hailey moved to seal both filings because they contain medical and health information. The Board has not opposed Hailey's motion. But the records referenced throughout Hailey's reply brief, and attached as exhibits, were publicly filed in the trial court. Hailey does not address the trial court record in his motion to this court. To the extent Hailey wants these records sealed, he may bring a GR 15 motion before the trial court and then file a redacted version of his reply brief with this court. Upon filing a redacted brief, Hailey's earlier submissions will be sealed. As a result, we deny Hailey's motion to seal without prejudice.

**AGO/GCE**

**June 28, 2024 - 3:24 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 103,067-3  
**Appellate Court Case Title:** Steve Hailey v. Washington State Executive Ethics Board  
**Superior Court Case Number:** 22-2-00656-9

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