

Docket No. 854488

---

IN THE WASHINGTON COURT OF APPEALS  
DIVISION ONE

---

DANIELLE STERLING AND DARREN STERLING, wife  
and husband

Petitioner,  
vs.

STATE OF WASHINGTON, by and through THE  
UNIVERSITY OF WASHINGTON, d/b/a “UW Medicine”,  
“UW Physicians” and “Harborview Medical Center”,

Respondents.

---

PETITION FOR REVIEW

---

DUBIN LAW GROUP  
Falin McKenzie,  
WSBA No. 56067  
P.O. Box 30947  
Seattle, WA 98113  
Mobile: (206) 413-2023  
E-mail:  
falin@dubinlawoffice.com

Attorney Petitioners

## Table of Contents

Table of Authorities.....	iii-v
A. IDENTITY OF PETITIONER .....	1
B. COURT OF APPEALS DECISION.....	1
C. ISSUES PRESENTED FOR REVIEW .....	1
D. <u>STATEMENT OF THE CASE</u> .....	2
E. ARGUMENT.....	7
I. THE DECISION IS IN CONFLICT WITH A PUBLISHED COURT OF APPEALS DECISION .....	7
II. THE DECISION INVOLVES A SIGNIFICANT QUESTION OF LAW .....	8
III. THE DECISION INVOLVES AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST .....	9
E. CONCLUSION .....	10
APPENDIX .....	12

## Table of Authorities

### Table of Cases

#### Washington Cases

<i>Kilian v. Atkinson</i> , 147 Wash. 2d 16, 2002.....	9
<i>Lee v. Metro Parks Tacoma</i> , 183 Wn. App. 961, 968, 335 P.3d 1014 (2014).....	7
<i>Sterling v. State of Washington</i> , No. 85448-8-1, (Wash. Ct. App. April 15, 2023).....	1

#### Statutes

RCW 4.92 .....	1, 9
RCW 4.92.110 .....	5
RCW 4.96 .....	10

### **A. IDENTITY OF PETITIONER**

Danielle and Darren Sterling ask this court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

### **B. COURT OF APPEALS DECISION**

Petitioners seek review of the Court of Appeals' unpublished opinion in *Sterling v. State of Washington*, No. 85448-8-1, (Wash. Ct. App. April 15, 2023), which affirmed the trial court's dismissal on motion for summary judgment. This ruling terminated review. A copy of the decision is in the Appendix at pages A-1 through A-6.

### **C. ISSUES PRESENTED FOR REVIEW**

1. Should this Court accept review to determine whether the *Sterling* decision follows Division II and Division III interpretations of substantial compliance under RCW 4.92.
2. Should this Court accept review to determine the scope of the State of Washington's ability to condition the exercise of claims against it by providing a misleading process by which to bring them?

#### **D. STATEMENT OF THE CASE**

This is a negligence case where Ms. Sterling sustained a stage four sacral pressure ulcer while unconscious and under the care of UW.

On January 9, 2020, Danielle Sterling, a 40-year-old mother of two, was transferred from Evergreen Hospital to Harborview Medical Center. At the time of the transfer, she was in a medically induced coma and not able to communicate for herself. She continued to receive care while in her unconscious state until approximately February 24, 2020, when she awoke from her coma to discover a painful, rotting pressure injury on her tail bone. CP 58-63. This marked the beginning of a long, painful recovery of wound care, debridement, reconstructive surgery and physical therapy. During her hospital stay she was completely reliant on her care team. She had no capacity to advocate for herself, to reposition herself, or to communicate in any way. CP 1-4, 58-63. Ms. Sterling's life will never be the same. Her body will never look the same. It will never move the same. Ms. Sterling will never again

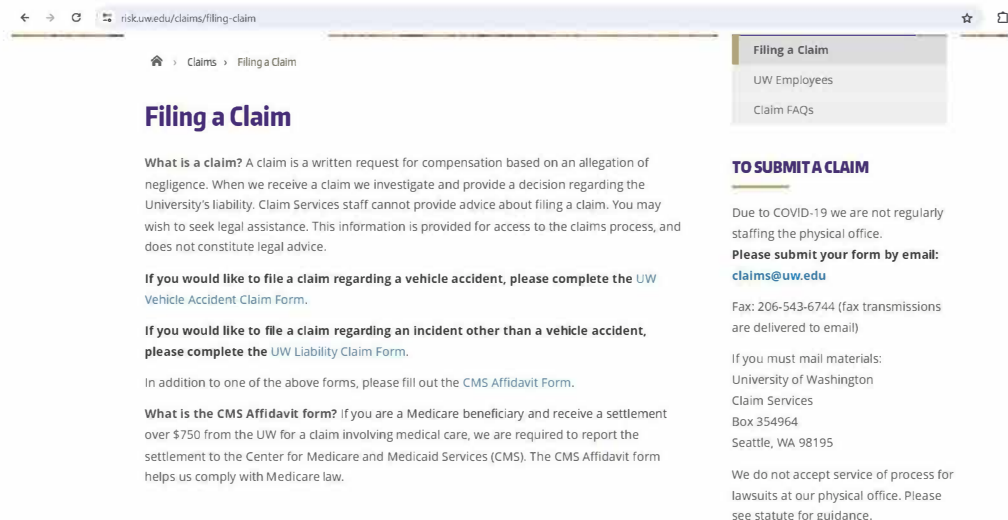
have a day without scars and discomfort- a constant reminder of her injuries and painful recovery. Her husband, Darren spent months helping to care for the wounds, care for the couple's children, care for their home, all while working to support the family.

On December 30, 2022, Ms. Sterling submitted a tort claim form by email to [claims@uw.edu](mailto:claims@uw.edu), as instructed by UW's website and the form itself which was provided on the website. CP 64-86. Ms. Sterling executed the correct form, with correct information, in the correct time frame and delivered it to the address that was listed on the form. On January 5, 2023, Ms. Sterling received correspondence regarding the claims process. This correspondence indicated that ***all communications should be directed to Intercare*** on behalf of University of Washington Harborview Medical Center. It further provided instructions to serve the Attorney General's Office in the event of a lawsuit. CP 64-86 Exhibit 1. Ms. Sterling then inquired where she should direct requests for missing medical records in an email on January 6, 2023. CP 64-86 Exhibit 2. On January 19, 2023, Ms. Sterling received correspondence from

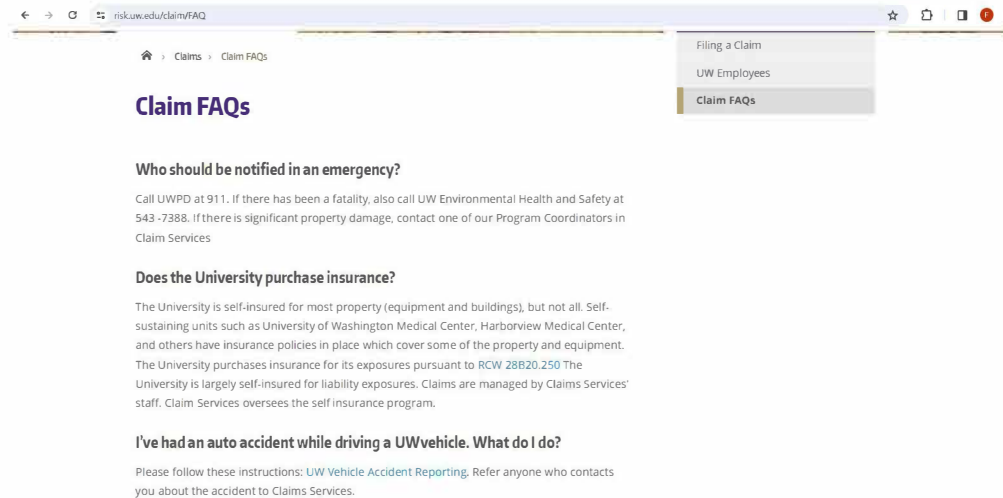
UW Claim Services assistant director, Matt Weber. The letter acknowledged receipt of the tort claim form and indicated an investigation was underway and would take 60-90 days. CP 64-86 Exhibit 3. After receiving no offer or denial of liability or request for additional information the Sterling's filed suit after waiting the required 60 days. CP 1-4.

Ms. Sterling found UW's claim form on UW's website.

<https://risk.uw.edu/claims/filing-claim>



In the FAQ section of the claims website, UW identifies itself as largely self insured for liability exposures and that Claims Services manage claims and oversee the self insurance program.



<https://risk.uw.edu/claim/FAQ>

Here, UW is telling the public that they are self insured and that they investigate their own claims. They provide a link to a claim form and identify where to mail, email or fax the form in order to make a claim.

Respondent goes on to say that “UW’s Claim Form expressly told her that notice to UW did not comply with RCW 4.92.110 and that she was required to file a claim with DES.” Id at 3. In fact, the form does not say she was required to file a claim with DES. It says, this form “does not constitute a filing with Department of Enterprise Services.”



### University of Washington Claim Form

To file a claim with UW Claim Services, complete this form and submit:

(Preferred)  
By email to: [claims@uw.edu](mailto:claims@uw.edu)

OR  
By fax to: (206) 543-6744

OR  
By mail to: Claim Services  
Box 354964  
Seattle, WA 98195

Note: Claim Services will primarily communicate by email. Please notify us if you cannot access email.

In the event that the claim cannot be resolved informally, filing this claim with the University of Washington does not constitute a filing with the Department of Enterprise Services pursuant to RCW 4.92.110. This claim form is subject to public disclosure, and may be disclosed without redaction.

UW complies with applicable Federal civil rights laws and does not discriminate on the basis of race, color, national origin, age, disability or sex. If you have limited English proficiency, please see page 4.

It does not provide an address or instructions for submitting a form to DES. It only provides instructions for submitting to UW claim services.

On April 15, 2024, the Washington Court of Appeals affirmed the trial court decision to dismiss the Sterling's claims. As a point of procedural correction- the Court of Appeals outlines in its Order, "Then, on April 3, 2023, Sterling sent the UW Claim form to UIM." While the Sterlings did submit a separate claims form to OES on April 3, 2023- it was for a different set of dates, alleging negligence for ongoing care. As discovery with Evergreen progressed, it became clear that UW was not involved in ongoing care and a claim for negligence in ongoing care was not supported by the facts. The Sterlings were not able to submit their tort claim

form for injuries sustained during Danielle's January to February stay at UW to OES as the statute of limitations had run by the time they knew they were supposed to do so.

The Sterlings are now seeking discretionary review to reiterate their position that, if UW is going to provide a form, it cannot be misleading. If UW is going to provide a form that is misleading, they cannot then use the misleading form as a shield to bar legitimate claims.

## **E. ARGUMENT**

### **I. THE DECISION IS IN CONFLICT WITH A PUBLISHED COURT OF APPEALS DECISION**

A recent authority identifies the meaning of substantial compliance as when, "statute has been followed sufficiently as to carry out the intent for which the statute was adopted." *Lee v. Metro Parks Tacoma*, 183 Wn. App. 961, 968, 335 P.3d 1014 (2014). In this case, a claim form was timely submitted. The court in *Lee* analyzed if Plaintiff had substantially complied with the 60 day requirement. Ultimately they decided that the *Lee* Plaintiff had not complied- however the court analyzed the requirements by

identifying the time limitation as procedural and therefore subject to substantial compliance. Here- the Sterlings failure to submit the same form to a second office did not prejudice UW's opportunity to investigate, evaluate, or potentially settle the claim. Ms. Sterling timely submitted an appropriate form to an appropriate party. A party who publicly holds themselves out as self insured and identifies themselves as the party who investigates claims against them. UW has shown no evidence to support a contention that submitting the same information to a second office has prejudiced their opportunity to investigate, evaluate, or potentially settle this claim.

This decision is also in conflict with *Kilian v. Atkinson*, 147 Wash. 2d 16, 2002 in which the court says that statutes are constructed in a manner that avoids unlikely, absurd or strained consequences.

## **II. THE DECISION INVOLVES A SIGNIFICANT QUESTION OF LAW**

What is meant by substantial compliance and which elements it applies to in RCW 4.92 needs review.

### **III. THE DECISION INVOLVES AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST**

UW is a massive entity with significantly more resources than the Sterlings. UW is intimately familiar with the appropriate process by which to bring a claim against them for their negligence. Publishing a form that instructs claimants to bring a claim against them that is misleading then using it to dismiss valid claims- is unfair and not in keeping with the intent of the rules. UW is hiding behind a procedural hook of which they are well aware. All we are asking is an opportunity to put on a case on the merits. The facts, which are gruesome and humiliating. RCW 4.96 does not allow for local agencies to be misleading by providing a deliberately confusing form then barring claims because their form was misleading. While we agree with the court of appeals that UW is not a local agency- shouldn't they also be restricted from setting up a confusing and misleading process then barring claims for failure to comply with process they not only didn't provide but instructed a different process all together? This issue is ripe for review.

## **E. CONCLUSION**

For the reasons stated above, the Sterling's respectfully request that this Court accept review, allow Petitioners to file a supplemental brief, and ultimately allow the Sterling's their day in court.

This brief consists of 1,419 words in compliance RAP 18.17.

DATED May 15, 2024.

Dubin Law Group

By: /s/ Falin McKenzie

Falin McKenzie, WSBA 56067

P.O. Box 30947

Seattle, WA 98113

Cell: (206) 413-2023

Email: [falin@dubinlawoffice.com](mailto:falin@dubinlawoffice.com)

Attorneys for Appellants  
Danielle Sterling and Darren Sterling

### **Certificate of Service**

I, Falin McKenzie, hereby certify that on May 15, 2024, I caused the foregoing document, to be served upon counsel of record in the manner described below and through the appellate court portal.

Levi S. Larson, WSBA #39225  
Jane J. Liu, WSBA #49649  
Larson Health Advocates, PLLC  
1700 Seventh Avenue, Ste. 2100  
Seattle, WA 98101  
[levi@lhafirm.com](mailto:levi@lhafirm.com); [jane@lhafirm.com](mailto:jane@lhafirm.com);  
[lindsay@lhafirm.com](mailto:lindsay@lhafirm.com); [erika@lhafirm.com](mailto:erika@lhafirm.com)

Howard M. Goodfriend, WSBA #14355  
Ian C. Cairns, WSBA #43210  
Jonathan B. Collins, WSBA #48807  
Smith Goodfriend, P.S.  
1619 8<sup>th</sup> Avenue North  
Seattle, WA 98109  
[howard@washingtonappeals.com](mailto:howard@washingtonappeals.com);  
[andrienne@washingtonappeals.com](mailto:andrienne@washingtonappeals.com)

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

DATED May 15, 2024.

By: /s/ Falin McKenzie  
Falin McKenzie, WSBA No. 56067

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DANIELLE STERLING and DARREN  
STERLING, wife and husband,

Appellants,

v.

STATE OF WASHINGTON, by and  
through THE UNIVERSITY OF  
WASHINGTON, d/b/a “UW Medicine,”  
“UW Physicians,” and “Harborview  
Medical Center,”

Respondents.

No. 85448-8-I

DIVISION ONE

UNPUBLISHED OPINION

BOWMAN, J. — Danielle Sterling and her husband appeal the trial court’s order dismissing her medical negligence lawsuit against the state of Washington, University of Washington (UW), UW Medicine, UW Physicians, and Harborview Medical Center. Sterling argues the trial court erred by dismissing her lawsuit for failure to file a claim with the Department of Enterprise Services (DES) Office of Risk Management (ORM) under chapter 4.92 RCW. We affirm.

FACTS

On December 26, 2019, EvergreenHealth hospital admitted Sterling with pancreatitis. EvergreenHealth put Sterling into a medically induced coma because of complications in her treatment. Her condition worsened, and on January 9, 2020, EvergreenHealth transferred Sterling to Harborview. On January 23, 2020, Sterling’s providers discovered that she had developed a

“sacral pressure ulcer” on the base of her spine. On February 22, 2020, Sterling regained consciousness and learned about the injury. The ulcer had become infected and necrotic, requiring debridement, surgery, and rehabilitative therapy.

On December 30, 2022, Sterling filed a “UW Claim Form” with UW Claim Services, seeking \$2.5 million in damages.<sup>1</sup> On January 5, 2023, Harborview acknowledged receipt of Sterling’s claim form. On January 19, 2023, UW Claim Services also acknowledged receipt of Sterling’s claim form, stating that it “will investigate the claim and provide a written response,” which “may take from 60 to 90 days to complete.”

On February 3, 2023, 15 days later, Sterling sent a demand letter to UW Claim Services, again seeking \$2.5 million to settle her claims. She informed UW Claim Services that she intended to “immediately proceed to litigation” if it did not accept the demand within 15 days. On March 1, 2023, Sterling and her husband sued the state of Washington, UW, UW Medicine, UW Physicians, and Harborview (collectively State), alleging medical negligence. Then, on April 3, 2023, Sterling sent the UW Claim Form to ORM.

On April 28, 2023, the State moved for summary judgment, arguing that Sterling failed to comply with the claim procedures outlined in chapter 4.92 RCW. The trial court granted the motion and dismissed Sterling’s lawsuit.

Sterling appeals.

---

<sup>1</sup> UW Medical manages Harborview.



## ANALYSIS

Sterling argues that the trial court erred by dismissing her medical negligence lawsuit for failure to file a claim with ORM under chapter 4.92 RCW. We disagree.

We review orders on summary judgment de novo, engaging in the same inquiry as the trial court. *Kim v. Lakeside Adult Fam. Home*, 185 Wn.2d 532, 547, 374 P.3d 121 (2016). “Summary judgment is appropriate only if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *Rublee v. Carrier Corp.*, 192 Wn.2d 190, 198, 428 P.3d 1207 (2018); CR 56(c). We consider facts and inferences in a light most favorable to the nonmoving party. *Id.* at 199.

The legislature enacted chapter 4.92 RCW to abrogate sovereign immunity and establish procedures for suing the state. *Hyde v. Univ. of Wash. Med. Ctr.*, 186 Wn. App. 926, 929, 347 P.3d 918 (2015). The statutory filing procedures preclude tort actions against the state unless the plaintiff first files a claim with ORM:

All claims against the state, or against the state’s officers, employees, or volunteers, acting in such capacity, for damages arising out of tortious conduct, must be presented to [ORM].<sup>[2]</sup>

RCW 4.92.100(1). And the claimant must file the claim with ORM at least 60 days before commencing an action:

No action subject to the claim filing requirements of RCW 4.92.100 shall be commenced against the state, or against any state officer,

---

<sup>2</sup> RCW 4.92.006(3) defines ORM as “the office within [DES] that carries out the powers and duties under this chapter relating to claim filing, claims administration, and claims payment.”

employee, or volunteer, acting in such capacity, for damages arising out of tortious conduct until [60] calendar days have elapsed after the claim is presented to [ORM].

RCW 4.92.110.

Under RCW 4.92.100(1), a claimant properly files a claim form when they deliver it “in person or by regular mail, registered mail, or certified mail, with return receipt requested, or as an attachment to email or by fax, to [ORM].” A claimant must use the standard claim form maintained by ORM and posted on the DES website. *Id.* The remedy for failure to comply with the claim filing requirements is dismissal. *Hyde*, 186 Wn. App. at 929. But courts must “liberally construe[ ]” these procedural and content requirements “so that substantial compliance will be deemed satisfactory.” RCW 4.92.100(3).

Sterling argues that she “substantially complied” with the procedural requirements under RCW 4.92.100(1) by filing the UW Claim Form with UW Claim Services—“the entity . . . responsible for investigating the claim.” She is incorrect.

“Substantial compliance . . . means that the ‘statute has been followed sufficiently so as to carry out the intent for which the statute was adopted.’” *Lee v. Metro Parks Tacoma*, 183 Wn. App. 961, 968, 335 P.3d 1014 (2014) (quoting *Banner Realty, Inc. v. Dep’t of Revenue*, 48 Wn. App. 274, 278, 738 P.2d 279 (1987)).<sup>3</sup> The purpose of RCW 4.92.100(1) and .110 is to provide notice of claims to the state so that ORM can maintain a centralized claim tracking system

---

<sup>3</sup> *Lee* addressed tort claim filing preconditions for lawsuits against municipalities under RCW 4.96.020. 183 Wn. App. at 965-68. But the “substantial compliance” standard under RCW 4.96.020(5) is identical to RCW 4.92.100(3).

and provide agencies with accurate and timely data on the status of liability claims. See RCW 4.92.210(2). The statutory procedure also enables ORM to value claims and “delegate to the appropriate office to investigate, negotiate, compromise, and settle the claim, or to retain that responsibility on behalf of and with the assistance of the affected state agency.” RCW 4.92.210(4). And the claim filing requirement under chapter 4.92 RCW “serves the reasonable purpose of fostering negotiation and settlement without substantially burdening tort claimants.” *Hall v. Niemer*, 97 Wn.2d 574, 581, 649 P.2d 98 (1982).

Here, Sterling did not file an ORM claim form with ORM before initiating her lawsuit. Instead, she filed a UW Claim Form with UW Claim Services.<sup>4</sup> Notifying UW Claim Services of her claim did not sufficiently carry out the legislature’s intentions behind RCW 4.92.100(1) and .110. She did not put ORM on notice of her claim, so it could not track, value, and delegate the claim as part of its centralized system. As a result, Sterling fails to show that she substantially complied with the claim filing requirements of chapter 4.92 RCW.

Citing *Estate of Connelly v. Snohomish County Public Utility District No. 1*, 145 Wn. App. 941, 187 P.3d 842 (2008), Sterling argues that the State cannot assert noncompliance as a defense because it did not itself fully comply with the statutory obligations of chapter 4.96 RCW. In *Connelly*, the plaintiff sued Snohomish County Public Utility District No. 1 (PUD), a local government entity, seeking tort damages. *Id.* at 943. PUD moved to dismiss the lawsuit as untimely. *Id.* at 943-44. The estate argued that PUD could not assert a

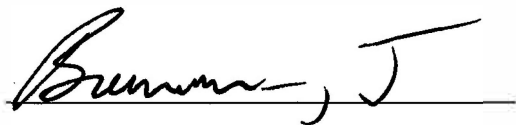
---

<sup>4</sup> We note that the UW Claim Form advises users that “**filing this claim with [UW] does not constitute a filing with [DES] pursuant to RCW 4.92.110.**”

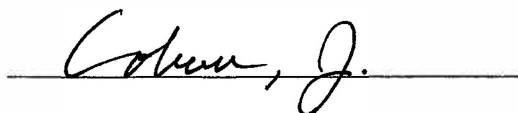
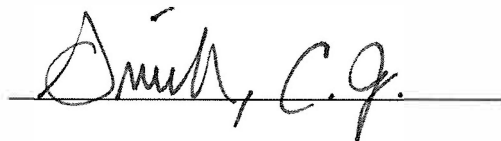
timeliness defense because it failed to appoint an agent to receive claims for damages as required under RCW 4.96.020. *Id.* We agreed. *Id.* at 948.

Sterling argues that like the PUD in *Connelly*, RCW 4.96.020(3)(c) precludes the State from raising a defense of noncompliance in her case because the UW Claim Form did not provide proper instructions on how to submit the form to ORM. But chapter 4.96 RCW governs the procedure for claims against local government entities. RCW 4.96.010. Harborview is not a local government entity. Rather, it is an arm of the state. *Hontz v. State*, 105 Wn.2d 302, 310, 714 P.2d 1176 (1986) (Harborview is an arm of the state because it is operated and managed by UW, a state agency). As a result, Sterling must comply with the claim filing requirements that apply to state entities—chapter 4.92 RCW. And she offers no argument that chapter 4.92 RCW precludes the State from raising noncompliance as a defense.

Because Sterling did not file a claim form with ORM at least 60 days before she sued the State, the trial court properly dismissed her lawsuit. We affirm.

A handwritten signature in black ink, appearing to read "Bunn, J.", written over a horizontal line.

WE CONCUR:

A handwritten signature in black ink, appearing to read "Cohen, J.", written over a horizontal line.A handwritten signature in black ink, appearing to read "Smith, C.J.", written over a horizontal line.

## DUBIN LAW GROUP

May 15, 2024 - 4:33 PM

### Transmittal Information

**Filed with Court:** Court of Appeals Division I  
**Appellate Court Case Number:** 85448-8  
**Appellate Court Case Title:** State of Washington, et ano., Respondents v. Danielle Sterling and Darren Sterling, Appellants

#### The following documents have been uploaded:

- 854488\_Petition\_for\_Review\_20240515162650D1582812\_2308.pdf  
This File Contains:  
Petition for Review  
*The Original File Name was Sterling Petition for Review.pdf*

#### A copy of the uploaded files will be sent to:

- andrienne@washingtonappeals.com
- howard@washingtonappeals.com
- ian@washingtonappeals.com
- jane@lhafirm.com
- jon@washingtonappeals.com
- jonathan.bruce.collins@gmail.com
- levi@lhafirm.com

#### Comments:

---

Sender Name: Jenn Culbertson - Email: litigation@dubinlawoffice.com

**Filing on Behalf of:** Falin M Esq Mckenzie - Email: falin@dubinlawoffice.com (Alternate Email: litigation@dubinlawoffice.com)

Address:  
115 North 85th Street  
Suite 202  
Seattle, WA, 98103  
Phone: (253) 844-4096

**Note: The Filing Id is 20240515162650D1582812**