Civil Service: An Overview 35th Annual Civil Service Conference

September 12 – 13, 2016

Wenatchee, Washington

P. Stephen DiJulio (206) 447-8971 | steve.dijulio@foster.com



Program Outline

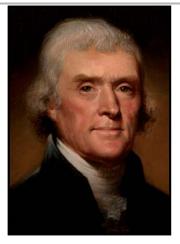
- Introduction
- Basics
- OPMA and PRA
- Hearings

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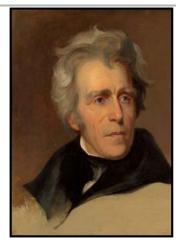
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INTRODUCTION

Background



Jefferson (1801-1809)

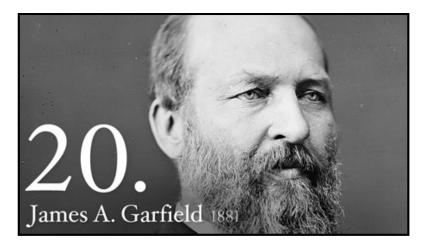


Jackson (1829-1837)

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Background



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Background



Civil Service Reform Act of 1883

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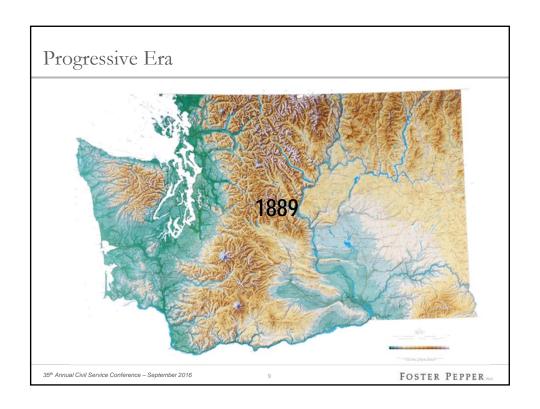
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Background



Civil Service Reform Act of 1978

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Systems



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Systems



Ch 41.08 RCW (1935)

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Systems



Ch 41.12 RCW (1937)

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Systems



Ch. 41.14 RCW (I-23, 1958)

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Systems



Other

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Basics



- Structure
- Purpose
- Coverage
- Jurisdiction
- Collective bargaining

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Structure



Reynolds v. Kirkland Police Commission

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Purpose



- Merit
- Tenure
- Independent commission

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Vested Rights?



Greig v. Metzler

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Who Runs Department?



Easson v. Seattle

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RCW 41.12.050

Persons Included -- Restricted Exemptions:

If the police chief is exempt, the classified civil service includes all full paid employees of the department of the city, town, or municipality, except the police chief and an additional number of positions, designated the unclassified service, determined as follows:

Department Position	Unclassified Position Appointments
6 through 10 11 through 20	2 3
21 through 50	4
51 through 100	5
101 through 250	6
251 through 500	8
501 and over	10

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RCW 41.12.050 Persons Included -- Restricted Exemptions:

- Assistant chief
- Deputy chief
- Bureau commander, and
- Administrative assistant or administrative secretary.

RCW 41.14.070

County Classified and Unclassified Service Designated:

The classified civil service and provisions of this chapter shall include all deputy sheriffs and other employees of the office of sheriff in each county except the **county sheriff in every county and an additional number of positions**, designated the unclassified service, determined as follows:

Staff Personnel	Unclassified Position Appointments
1 through 10	2
11 through 20	3
21 through 50	4
51 through 100	5
101 through 250	6
251 through 500	8
501 and over	10

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RCW 41.14.070

County Classified and Unclassified Service Designated:

- Undersheriff
- Inspector
- Chief criminal deputy
- Chief civil deputy
- Jail superintendent, and
- Administrative assistant or administrative secretary
- King County (> 500,000): unclassified positions of administrative responsibility not to exceed twenty positions

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Chapter 41.56 RCW and Collective Bargaining

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Civil Service v. Collective Bargaining



Spokane v. Civil Service Commission

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Basics

- Classification of positions
 - Examinations
 - Registers and eligibility
 - Certification and appointment
 - Probation
 - Discipline and discharge

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Classifications



State ex rel.

Reilly v. Civil Service

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Examinations: Written or Oral?



Stoor v. Seattle

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Examinations: Test Materials



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See Helland v. King County, 84 Wn.2d 858 (1975)

- A. It is a "crime" because it violates an existing statute.
- B. It is not a "crime" because the statute is obsolete and not usually enforced.
- C. It is a "crime" because the exposure may incite others to more serious crime.
- D. It is a "crime" because the offensiveness to public opinion justifies the use of the obsolete statute.
- E. It is not a "crime" because public opinion would not support the police in taking enforcement action.

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Examinations: Follow the Rules



See State ex rel. Hearty v. Mullin, 198 Wash. 99 (1939)

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Examinations: Open or Promotional?

O'Brien v. Civil Service Commission



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Examinations: Who Tests?



Simonds v. Kennewick

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Examinations: Basics

Employment selection procedure is valid if

"Predictive of or significantly correlated with important elements of job performance."

29 CFR § 16-7.5(B)

See, TITLE VII of the Civil Rights Act of 1964, 42 USC § 2000-e2(a)

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Examinations: Test Sequence



See Leonel v. American Airlines

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Register/List: Rule of Three (Or More)?



Seattle Police Officers Guild v. City of Seattle

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Certification and Appointment



See Crippen v. City of Bellevue

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Department Screening?



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Commission Review of Registers



- Who determines candidate eligibility?
- Managing appeals

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Probation



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Discharge/Discipline



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Reprimands?

City of Yakima (1991)



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Resignation



Micone v. Civil Service Commission

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Commission Jurisdiction?



Yakima v. Yakima Police Civil Service

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Increased Penalties



Pool v. City of Omak

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Arbitration v. Civil Service



City of Kelso

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Cause?

"In Good Faith For Cause" v. "Just Cause"

Seattle Police Dept. v. Civil Service



Authority to Appeal



Pierce County v. Civil Service Commission

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Open Government

- Open Public Meetings Act
 - Chapter 42.30 RCW
- Public Records Act
 - Chapter 42.56 RCW

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Commission Meetings



- Legislative
- Quasi-judicial
 - Bias
 - Prejudice
 - Prejudgment
 - Appearance of fairness

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Civil Service – An Introduction

35th Annual Civil Service Conference

Wenatchee, Washington

September 12-13, 2016

Presented by P. Stephen DiJulio Foster Pepper PLLC



CIVIL SERVICE—AN INTRODUCTION

PROGRAM

1. INTRODUCTION

2. THE BASICS

- 2.1 HISTORY AND FRAMEWORK
- 2.2 ADMINISTRATION AND OPERATIONS
- 2.3 COLLECTIVE BARGAINING ISSUES
- 2.4 CLASSIFICATION OF POSITIONS
- 2.5 EXAMINATIONS
- 2.6 REGISTERS AND ELIGIBILITY
- 2.7 CERTIFICATION AND APPOINTMENT
- 2.8 PROBATION
- 2.9 DISCIPLINE AND DISCHARGE

3. MEETINGS, HEARINGS, AND PROCEDURES

- 3.1 OPEN MEETINGS ACT
- 3.2 PUBLIC DISCLOSURE
- 3.3 APPEARANCE OF FAIRNESS DOCTRINE
- 3.4 CONDUCT OF A DISCIPLINARY HEARING

ATTACHMENTS:

• Civil Service—A CHRONOLOGY

CIVIL SERVICE

A CHRONOLOGY Washington Law and Practice

P. STEPHEN DIJULIO Foster Pepper PLLC Seattle, Washington

September 2016

1883	Pendleton Act – Federal Civil Service
1889	State of Washington Incorporation
1896	Seattle City Charter
1903	Easson v. Seattle, 32 Wash. 405, 73 Pac. 496 (1903)
1906	Ryan v. Handley, 43 Wash. 232, 86 Pac. 398 (1906)
1914	Clayton Antitrust Act as amended, 15 U.S.C. § § 12-27
1919	Labor Unions Legalized Chapter 185, Laws of 1919, and RCW 49.36.010-49.36.030
1926	Railway Labor Act as amended, 45 U.S.C. §§ 151-188
1932	Norris-LaGuardia Act as amended, 29, U. S. C. § § 101-115
1933	Injunctions in Labor disputes Chapter 7, Laws of 1933, Ex. Sess., and Chapter 49.32 RCW
1935	National Labor Relations Act as amended, 29 U.S.C. § § 151-169
	Civil Service for City Firemen Chapter 31, Laws of 1935, and Chapter 41.08 RCW
1937	Civil Service for City Policemen Chapter 13, Laws of 1937, and Chapter 41.12 RCW
1939	State ex. rel. Hearty v. Mullin, 198 Wash. 99, 87 P.2d 280
1940	<u>Isham v. Spokane,</u> 2 Wn.2d 392, 98 P.2d 306 (1940)

1941	State ex rel Reilly v. Civil Serv. Comm., 8 Wn.2d 498, 112 P.2d 987 (1941)
1947	Labor Management Relations Act as amended, 29 U.S.C. § § 141, et seq.
1954	Stoor v. Seattle, 44 Wn.2d 405, 267 P.2d 902 (1954)
1958	Civil Service for County Sheriffs Initiative Measure No. 23, and Chapter 41.14 RCW
1959	Labor Management Reporting and Disclosure Act 29 U.S.C. § § 401-531
1960	State Civil Service Initiative Measure No. 207, and Chapter 41.06 RCW
1963	Reynolds v. Kirkland Police Comm., 62 Wn.2d 720, 384 P.2d 819 (1963)
1967	Public Employees Collective Bargaining Act Chapter 108, Laws of 1967, Ex. Sess., and Chapter 41.56 RCW
1973	Interest Arbitration Chapter 131, Laws of 1973, and RCW 41.56.430-41.56.490
1976	PERC Created Chapter 5, Laws of 1975-1976, 2nd Ex. Sess., and Chapter 41.58 RCW
	Bellingham Fire Fighters v. Bellingham, 15 Wn. App. 662, 551 P.2d 142 (1976)
1977	Arbogast v. Westport, 18 Wn. App. 4, 567 P.2d 244 (1977)
1978	<u>Firefighters v. Walla Walla,</u> 90 Wn.2d 828, 586 P.2d 479 (1978)
	State Employees v. Community College, 90 Wn.2d 698, 585 P.2d 474 (1978)

1979 <u>Deputy Sheriff's Guild v. Comm'rs,</u> 92 Wn.2d 844, 601 P.2d 943 (1979)

1980 <u>Seattle v. Auto Sheet Metal Workers, Local 387,</u> 27 Wn. App. 669, 620 P.2d 119 (1980)

City of Bellevue,

Decision No. 839 (PECB, 1980)

1981 <u>Yakima v. Yakima Police,</u> 29 Wn. App. 756, 631 P.2d 400 (1981)

1982 <u>Greig v. Metzler,</u> 33 Wn. App. 223, 653 P.2d 1346 (1982)

1983 <u>Pierce County v. Civil Service Commission,</u> 98 Wn.2d 690, 658 P.2d 648 (1983)

<u>Keeton v. Social & Health Servs.</u>, 34 Wn. App. 353, 661 P.2d 982 (1983)

1984 <u>State Employees v. State,</u> 101 Wn.2d 536, 682 P.2d 869 (1984)

> Pool v. Omak, 36 Wn. App. 844, 678 P.2d 343 (1984)

1985 <u>Simonds v. Kennewick,</u> 41 Wn. App. 851, 706 P.2d 1080 (1985)

<u>Cleveland Board of Education v. Loudermill,</u> 470 U.S. 532, 84 L.Ed.2d 494, 105 S.Ct. 1487 (1985)

<u>City of Wenatchee</u>, Decision No. 2216 (PECB, 1985)

1986 Rose v. Erickson, 106 Wn.2d 420, 721 P.2d 969 (1986)

Micone v. Town of Steilacoom Civil Serv. Comm., 44 Wn. App. 636, 722 P.2d 1369 (1986)

Roberts v. Fire Protection Dist., 44 Wn. App. 744, 723 P.2d 488 (1986)

- 1987 <u>Shoemaker v. City of Bremerton,</u> 109 Wn.2d 504, 745 P.2d 858 (1987)
- 1988 <u>Samuels v. Lake Stevens</u>, 50 Wn. App. 475, 749 P.2d 187 (1988)
- 1991 <u>Crippen v. Bellevue</u>, 61 Wn. App. 251, 810 P.2d 50 (1991)

<u>Yakima v. Yakima Firefighters,</u> 117 Wn.2d 655, 818 P.2d 1076 (1991)

- 1992 <u>Pasco v. PERC,</u> 119 Wn.2d 504, 833 P.2d 381 (1992)
- 1993 <u>Teamsters v. Moses Lake,</u> 70 Wn. App. 404, 853 P.2d 951 (1993)

<u>Dawson v. Daly,</u> 120 Wn.2d 782, 845 P.2d 995 (1993)

- 1994 Matson v. Civil Service Board [Tacoma], 75 Wn. App. 370 (1994)
- 1997 <u>Amren v. Kalama</u>, 131 Wn.2d 25, 929 P.2d 389 (1997), and

<u>Limstrom v. Ladenburg</u>, 85 Wn. App. 524, 933 P.2d 1055 (1997)

- 1998 <u>Civil Service Comm'n v. City of Kelso</u>, 137 Wn. 2d 166, 969 P.2d 474 (1998)
- 1999 <u>Bunko v. Puyallup Civil Service Comm'n</u>, 95 Wn. App. 495, 975 P.2d 1055 (1999)

Civil Service Commission [City of Kelso] v. City of Kelso, 137 Wn.2d 166 (1999)

Americans with Disabilities Act ("ADA"), 42 USC §12101, et seq.

- 2001 <u>Bickford v. City of Seattle,</u> 104 Wn. App. 809, 17 P.3d 1240 (Wash. App. Div.1 2001); review denied, 144 Wn. 2d 1019, 32 P.3d 284 (2001)
- 2002 Chapter 143, Laws of 2002 Amends RCW 41.12.050 (unclassified positions)

Seattle Police Officers Guild v. City of Seattle, 151 Wn. 2d 823, 92 P.3d 243 (2004).
Leonel v. American Airlines, 400 F.3d 702 (9th Cir. 2005)
Yakima County Law Enforcement Officers Guild v. Yakima County, 133 Wn. App. 281, 135 P.3d 558 (2006)
City of Seattle Police Dept. v. City of Seattle Public Safety Civil Service Comm'n., 155 Wn. App. 878 (2010)
Skinner v. City of Medina, 168 Wn.2d 845 (2010)
City of Seattle v. Werner, 163 Wn. App.899, 261 P.3d 218 (2011)

City of Medina v. Skinner, 184 Wn. App. 449, 336 P.3d 1172 (2014)

Goding v. King County, 192 Wn. App. 270, 366 P.3d 1 (2015)

2014

2015



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SERVICES

Municipal Government Construction **Employment & Labor Environmental & Natural** Resources **Environmental Litigation** Infrastructure Land Use, Planning & Zoning Litigation & Dispute Resolution **Ports** Real Estate Right-of-Way (Chair) **School Districts** Sports Law Transportation

Wine, Beer & Spirits

PRACTICE OVERVIEW

Steve's practice focuses on litigation involving state and local governments; civil service and public employment; and, land use and environmental law. His particular experience includes representation of jurisdictions on eminent domain, utilities (water, wastewater, storm water, solid waste systems), local improvement districts, facility siting and contractor litigation.

REPRESENTATIVE WORK

- Brower v. State/Football Northwest, 137 Wn.2d 44 (1998) (Successful defense of public-private stadium project and legislative referendum)
- Central Puget Sound Regional Transit Authority v. Miller, 156 Wn.2d 403 (2006) (successful defense of Sound Transit eminent domain action)
- HTK v. Seattle Popular Monorail, 155 Wn.2d 612 (2005) (successful defense of municipal condemnation authority)
- Servais v. Port of Bellingham, 127 Wn.2d 820 (1995) (amicus for Washington Public Ports Association in defense of protected public records
- Klickitat Citizens v. Klickitat County, 122 Wn.2d 619 (1993) (Defense of comprehensive plan and environmental impact statement for regional landfill)
- Rabanco v. King County, 125 Wn. App. 794 (2005) (successful defense of county solid waste management authority)
- Wong, et al. v. City of Long Beach, 119 Wn. App. (2004) rev. denied 152 Wn.2d 1015 (2004) (successful defense of city trail project)
- Washington Waste Systems, Inc. v. Clark County, 115 Wn.2d 74 (1990) (Defense of multi-million dollar government contract procurement)
- Barnier v. City of Kent, 44 Wn. App. 868 (1986) (Defense of development assessment process)
- Tiffany Family Trust v. City of Kent, 155 Wash.2d 225 (2005) (successful defense of assessments and rejection of civil rights claims)
- Grant County Fire District No. 5 v. Moses Lake, Supreme Court, 150 Wn.2d 791 (2004) (Court reconsiders and unanimously reverses earlier ruling; affirms city annexation authority)

P. Stephen DiJulio MEMBER

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- Jensen v. Torr, 44 Wn. App. 207 (1986) (Defense of government permit process and immunity of government officials)
- Prater v. City of Kent, 40 Wn. App. 639 (1985) (Defense of claims of discrimination in employment)
- Babcock v. Mason County Fire Dist. No. 6, 144 Wn.2d 774 (2001) (amicus for Fire Commissioners Association regarding public duty doctrine)
- Little Deli Marts, Inc. v. City of Kent, 108 Wn. App. 1, 32 P.3d 286 (2001); 107 Wash. App. 1011 (2001) rev. denied
 145 Wn.2d 1030 (2002) (successful defense of local improvement district process)
- City of Seattle v. Auto Sheet Metal Workers Local, 38727 Wn. App. 669, 620 P.2d 119 (1980) (Defense of City charter and personnel system reorganization)
- Leonard v. Civil Service Commission of City of Seattle, 25 Wn. App. 699, 611 P.2d 1290 (1980) (Judicial review of administrative proceedings)
- Silver Firs Town Homes, Inc. v. Silver Lake Water Dist., 103 Wn. App. 411, 12 P.3d 1022 (2000) rev. denied 143 Wn.2d 1013 (2001) (successful defense of connection charges)
- Petersen v. City of Seattle, 21 Wn. App. 108, 583 P.2d 1259 (1978) (Constitutionality of reckless driving laws upheld)
- City of Seattle v. Platt, 19 Wn. App. 904, 578 P.2d 873 (1978) (Prosecution and public record defense in criminal proceedings)
- City of Seattle v. Shepherd, 93 Wn.2d 861, 613 P.2d 1158 (1980) (upholding crime victims' rights to recovery of stolen property)

RECOGNITION

- The Best Lawyers in America[©] Appellate Practice, 2012-2017
- Best in the Business: Leading Lawyers in the Puget Sound Region, Seattle Business magazine, Appellate Practice, 2013
- Washington Super Lawyers list, 2002-2016
- -2010 Top Lawyer, Seattle Metropolitan magazine
- Martindale-Hubbell AV rating

ACTIVITIES

- Municipal League, Board of Trustees, 2010-2013
- Washington State Association of Municipal Attorneys
- International Municipal Lawyers Association
- American Bar Association, State and Local Government Law and Labor and Employment Law Sections, Member
- Washington State Bar Association
 - + Environmental and Land Use Law and Administrative Law Sections, Member
 - + Amicus Brief Committee, Member
- King County Bar Association, Trustee, 1986-1989
- South King County Bar Association, Trustee, 1986-1988
- South King County Legal Clinic
 - + Attorney Coordinator, 1985-1986
 - + Volunteer, 1978-1989
- University of Washington
 - + Lecturer, Evans Graduate School of Public Affairs

P. Stephen DiJulio MEMBER

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QUOTED

- "Breaking Down Freedom of Information Laws," The Willis Report, FOX Business News, July 2010

PUBLICATIONS

- Foster Pepper Local Open Government Blog
 - + Steve DiJulio is a contributor to Foster Pepper's Local Open Government Blog.
- "Washington Supreme Court Levels the Playing Field in Real Estate and Land Use Litigation," Co-author, Foster Pepper News Alert, June 2015
- "Washington Initiative I-517 Impacts Retailers, Public Facility Access and Local Government Elections," Co-author, Foster Pepper News Alert, September 2013
- "U.S. Supreme Court Decision Expands Scope of Takings Clause," Co-author, Foster Pepper News Alert, June 2013
- "Court of Appeals Reaffirms Public Utility District Authority to Condemn State School Trust Lands," Co-author, Foster Pepper News Alert, May 2013
- "Pollution Control Hearings Board Clarifies Use of Overriding Consideration of Public Interest Statute," Co-author, Foster Pepper News Alert, March 2013
- "Curing a Violation of the Open Public Meetings Act?" Co-Author, Advisor Column, Municipal Research and Services Center of Washington, March 2013
- "A Blessing on Your Meeting?" Co-Author, MRSC In Focus: Council/Commission Advisor, April 2012
- "Giving for the City: Constitutional Limits on Municipal Economic Development Programs," Cityvision Magazine, March/April 2012
- -2011 Washington Real Property Deskbook: Causes of Action, Taxation, Regulation, Editor
- "Council Meeting Conduct and Citizen Rights under the First Amendment," Author, Municipal Research and Services Center of Washington, November 2009

PRESENTATIONS

- Bidding Public Works and Construction Contracts, Program Co-Chair, The Seminar Group
 - + May 2016
 - + March 2016
- Elected Officials Essentials Live Webinar, Speaker, Association of Washington Cities, December 2015
- "Form, Structure and Content of Non-Land Use Proceedings and Decisions," Speaker, Hearing Examiners Association of Washington's 2015 Annual Conference, October 2015
- "Condemnation Public Trust Land," Speaker, International Municipal Lawyers Association's 80th Annual Conference, October 2015
- "Managing the Record and the Okanogan PUD Litigation," Speaker, PUD Municipal Attorney Conference, June 2015
- "The Judiciary and Government Policy," Guest Speaker, UW Political Science, May 2015
- "Is Your Employee Handbook Ready for Prime Time?" Speaker, Foster Pepper Client Briefing, April 2015
- "Open Government and Anti-SLAPP Litigation," Speaker, LSI Open Government Seminar, January 2015
- "Basic Training for New Commissioners and Staff; Annual Legal Update," Presenter, Civil Service Conference, 1986-2015
- "Labor Relations and Public Record Disclosure," Speaker, Washington State Office of the Attorney General CLE,
 December 2014
- "The Okanogan PUD Litigation: The Pitfalls of Life in One of Washington's Great Scenic Locations and Condemnation of State Lands," Speaker, PUD-Municipal Attorney Conference, June 2014

P. Stephen DiJulio MEMBER

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- "Infrastructure Development Managing Property Acquisition and Procurement," Speaker, Washington Public Utility District Association, Managers Committee Meeting, May 2014
- "<u>Labor Relations and Public Record Disclosure</u>," Speaker, Washington Association of Public Records Officers Spring Training, May 2014
- "Litigating Open Government Cases: A Well-Stocked Tool-Kit for Public and Private Practitioners"
 - + Program Co-Chair and Speaker, February 2014
 - Legal Ethics: Managing Conflicts and Understanding Privileges; What To Do When The Client Does Not Disclose
 - Continue the Exchange of Ideas: Reception for Faculty and Attendees
- "Privilege and the PRA: Freedom Foundation v. Gregoire," Speaker, Law Seminar International, One-Hour Expert Analysis, December 2013
- "Wage & Hour Compliance Beyond the Basics (Part I)," Presenter, Foster Pepper Client Briefing, February 2013
- "LIDs: Nuts and Bolts," Speaker, Washington State Association of Municipal Attorneys (WSAMA), May 2008
- "Newly Elected Officials Workshop," Speaker, Association of Washington Cities, January 2008
- "Eminent Domain," Speaker, Lorman Seminar, September 2006
- "Knowing the Legal Territory," Association of Washington Cities, 1988-2006 (Newly Elected Officials Workshop)
- "Road and Access Law in Washington," National Business Institute, 1999 and 2001
- "Inverse Condemnation Issues in the Direct Condemnation Setting," Law Seminars International, December 2000; December 1999; December 1998
- "Washington State Association of Fire Chiefs," Executive Officer Labor Relations Training Courses, 1998, 1993, 1992, 1989
- "The People's War: In the Trenches with Nuisances, NIMBYs, and Essential Public Facilities," Washington State Bar Association, Environmental & Land Use Law Section, May 1997
- "The ABCs of LUDs," Washington Public Utility Districts Association, July 1996, 1997

EXPERIENCE

- Foster Pepper PLLC
 - + Member, 1990-Present
 - + Associate, 1986-1990
- City of Kent, City Attorney, 1982-1986
- City of Seattle, Assistant City Attorney, 1977-1982

BAR ADMISSIONS

- -Washington, 1976
- U.S. District Court
 - + Eastern Division of Washington, 1993
 - + Western Division of Washington, 1976
- 9th Circuit U.S. Court of Appeals, 1980
- Supreme Court, State of Washington, 1976

EDUCATION

- -J.D., Seattle University, 1976
- -B.A., University of Washington (Oval Club Scholastic Honorary), 1973